

In the United States
Circuit Court of Appeals
For the Ninth Circuit. ✓

UNITED STATES OF AMERICA,

Appellant,

vs.

FRANCES HILL,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

APR 12 1938

PAUL P. O'BRIEN,
CLERK



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Circuit Court of Appeals
For the Ninth Circuit.

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vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant :

BEN HARRISON, Esq.,
United States Attorney.

ERNEST D. FOOKS, Esq.,
Department of Justice,

610 South Main Street,
Los Angeles, California.

For Appellee :

ALVIN GERLACK, Esq.,
845 Mills Building,
San Francisco, California.

UNITED STATES OF AMERICA, SS:

To Frances Hill Plaintiff and Alvin Gerlack, *his* attorney,
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 16th day of April, A. D. 1937, pursuant to Order Allowing Appeal filed March 16, 1937 in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action entitled Frances Hill vs. United States of America, No. 6155-H wherein the United States of America is defendant and appellant and you are plaintiff and appellee to show cause, if any there be, why the judgment in the said cause mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable HARRY A. HOLLZER
United States District Judge for the Southern District of California, this 16th day of March, A. D. 1937, and of the Independence of the United States, the one hundred and sixty-first

H. A. Hollzer

U. S. District Judge for the Southern District of California.

Receipt is hereby acknowledged of a copy of this citation and copies of the Petition for Appeal, Order Allowing Appeal, Assignments of Error, Order Extending Time within which to Serve & File Bill of Exceptions and Extending Term, & Order Extending Time to Docket Cause on Appeal, this 16th day of March, 1937.

Alvin Gerlack

ALVIN GERLACK,

Attorney for Plaintiff.

[Endorsed]: Filed Mar 16 1937 R. S. Zimmerman,
Clerk By L. B. Figg Deputy Clerk.

IN THE CENTRAL DIVISION OF THE UNITED
STATES DISTRICT COURT, FOR THE
SOUTHERN DISTRICT OF CALIFORNIA.

FRANCES HILL)	
)	
Plaintiff,)	
)	
-vs-	)	NO. 6155-H
)	
UNITED STATES OF AMERICA;)	
)	
Defendant.)	

COMPLAINT-WAR RISK INSURANCE

Plaintiff complains of the defendant and alleges:

L

That plaintiff is a citizen of the United States and a resident of the Southern District and State of California, and of the County of Los Angeles therein.

II

That this action is brought under the War Risk Insurance Act of October 6, 1917, and the World War Veterans Act of June 7, 1924 and amendatory acts, and is based upon a policy or certificate of insurance issued under said acts to the plaintiff by the defendant.

III

That on or about the 28th day of March, 1918, plaintiff entered the armed forces of the defendant; that she served the defendant as a Nurse in its Army from the said March 28th, 1918, to on or about February 3, 1919, when she was honorably discharged from said service and that dur-

ing all of said time she was employed in active service of defendant.

IV.

That immediately after entering the defendant's said service plaintiff made application for and was granted insurance in the sum of \$10,000. by the defendant, who thereafter issued to plaintiff *it's* certificate No. T of *his* compliance with said acts, so as to entitle *him* and *his* beneficiaries to the benefits of said acts, and the rules and the regulations of said bureaus and the directors thereof, and that during the term of her said service the defendant deducted from *his* pay for such service, the monthly premiums provided for by said acts and the rules and regulations promulgated by the defendant. That plaintiff paid all premiums promptly when the same became due on said policy until June 30, 1919.

V.

That while serving the defendant as aforesaid, the plaintiff contracted certain diseases, injuries and disabilities resulting in and known as pulmonary trouble, heart trouble and other disabilities as shown by the records and files of the United States Veterans Administration.

VI

That said diseases, injuries and disabilities have continuously since February 3rd, 1919, rendered and still do render the plaintiff wholly unable to follow any substantially gainful occupation, and such diseases, injuries and disabilities are of such nature and founded upon such conditions that it is reasonably certain they will continue throughout plaintiff's lifetime in approximately the same degree. That plaintiff has been, ever since February 3rd, 1919, and still now is, permanently and totally disabled by

reason of, and as a direct and proximate result of such disabilities above set forth.

VII

That plaintiff on June 18th, 1931, made application to the defendant, through its Veterans Bureau and the Director thereof, for the payment of said insurance for permanent and total disability, and that said Veterans Bureau, and the Director thereof have refused to pay plaintiff said insurance and on Dec. 16, 1932 disputed plaintiff's claim to said insurance and disagreed with her concerning her rights to the same.

VIII

That under the provisions of the said acts and other acts amendatory thereof, plaintiff is entitled to the payment of fifty-seven and 50/100 Dollars (\$57.50) for each and every month transpiring since February 3rd, 1919, and continuously thereafter so long as she lives and continues to be permanently and totally disabled.

IX

That plaintiff has employed the services of Alvin Gerlack, an attorney and counsellor at law, duly licensed and admitted to practice before this court and all courts of the State of California. That a reasonable attorney's fee to be allowed to plaintiff's attorney for his services in this action is ten per centum (10%) of the amount of insurance sued upon and involved in this action, payable at a rate not exceeding one-tenth of each of such payments until paid in the manner provided by Section 500 of the World War Veterans Act of 1924 as amended.

As and for a second, and separate cause of action, plaintiff alleges:

I.

Plaintiff adopts and reincorporates in this her Second Cause of Action, Paragraphs I, II, III, IV, V, VII and IX of *his* First Cause of Action, and makes them a part hereof, the same as if expressly set out in full herein.

II

That at the time plaintiff ceased to pay said premiums due on said insurance, she was suffering from a compensable disability, to wit multiple sclerosis, of ten per centum (10%) disability resulting directly from injury and disease contracted in line of duty while in active service of the defendant, United States of America: that in pursuance of the provisions of the War Risk Insurance Act and the World War Veterans' Act of June 7, 1924, as amended, plaintiff was given various compensation ratings by the defendant's Bureau of War Risk Insurance, and also its Veterans' Bureau, namely of a compensable degree of disability of ten per centum (10%) or more from Feb. 3, 1919 to the present time, all of which ratings are for a compensable degree of disability. That although entitled to compensation from the defendant's Veterans' Bureau on account of said ratings made by it, plaintiff drew no compensation from the defendant's Veterans' Bureau for any disability prior to April 1, 1920.

That by reason of non-payment of premium due on her said insurance as aforesaid, the defendant claims that said insurance lapsed on Feb. 3, 1919. That at all times from and after the 3rd day of Feb. 1919, up to and including April 1, 1920 through the application of compensation to which she was entitled under her disability ratings as

aforesaid, and Section 302 of the War Risk Insurance Act as amended December 24, 1919 and which was then uncollected, plaintiff's said insurance was revivable and revived in the sum of Ten Thousand Dollars (\$10,000.00) as directed by said Statutes, including Section 305 of the World War Veterans' Act of June 7, 1924 as amended, and became payable to her in monthly installments of Fifty Seven and 50/100 Dollars (\$57.50) per month, as of and from the date of the beginning of her permanent and total disability during the remainder of her life and in case of her death after the beginning of her permanent and total disability, thereafter to her beneficiary until the total of two hundred and forty (240) installments have been paid, less the unpaid premiums and interest thereon at five per centum (5%) per annum compounded annually in installments as provided by law.

III.

That ever since said Feb. 3, 1919, and at all times since that date, there has been due to plaintiff, said sum of Fifty Seven and 50/100 Dollars (\$57.50) for each and every month transpiring since said date, less unpaid premiums and interest thereon at five per centum (5%) per annum compounded annually in installments as provided by law, and that there will be due in the future like monthly installments in a like amount so long as plaintiff continues to live and remains permanently and totally disabled. That the defendant, United States of America has wrongfully and unlawfully refused to pay the plaintiff any of said monthly installments of Fifty Seven and 50/100 Dollars (\$57.50) per month due plaintiff, since Feb. 3rd, 1919.

WHEREFORE, PLAINTIFF prays judgment as follows:

First: That plaintiff since Feb. 3rd, 1919, has been and still is, permanently and totally disabled.

Second: That plaintiff have judgment against the defendant for all of the monthly installments of \$57.50 per month for each and every month from the said Feb. 3rd, 1919, and continuously, so long as she lives and remains permanently and totally disabled.

Third: Determining and allowing to plaintiff's attorney a reasonable attorney's fee in the amount of ten per centum (10%) of the amount of insurance recovered in this action, payable at a rate not exceeding one-tenth (1/10th) of each of such payments until paid in the manner provided by Section 500 of the World War Veterans' Act of 1924 as amended, and such other and further relief as may be just and equitable in the premises.

Fourth: That plaintiff have judgment against the defendant for all of the monthly installments of said insurance in the amount of \$57.50 per month for each and every month beginning with the date upon which she is found to be permanently and totally disabled, to-wit at any time between Feb. 3rd, 1919, and April 1, 1920, during all of which time she had uncollected compensation due *him* from the United States Veterans' Bureau, sufficient to have paid all premiums due on said insurance, less the unpaid premiums and interest thereon at five per centum (5%) per annum, compounded annually in installments as provided by law, and continuously thereafter, so long as plaintiff continues to live and remains permanently and totally disabled.

Alvin Gerlack
Attorney for Plaintiff

UNITED STATES OF AMERICA)
 Southern District and State of California) S.S
 of the City and County of San Francisco.)

ALVIN GERLACK, being first duly sworn, deposes and says:—

That he is an attorney-at-law duly admitted to practice before all Courts of the State of California and the United States District Court for the Central Division of the Southern District of the State of California and has his office at Number 220 Montgomery Street in the City and County of San Francisco, State of California, and is the attorney for plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof and the same is true of his own knowledge except as to the matters which are therein stated on his information or belief and as to *thos* matters that he believes it to be true; that the plaintiff is absent from the City and County of San Francisco where affiant has his office and for that reason affiant makes this verification on plaintiff's behalf. That there is not sufficient time to have said complaint verified by the plaintiff personally.

Alvin Gerlack

Subscribed and sworn to before me this 27th day of December, A.D., 1932.

[Seal]

Henrietta Harper

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Dec. 28, 1932 R. S. Zimmerman,
 Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

AFFIDAVIT OF SERVICE ON UNITED STATES
ATTORNEY AND MAILING NOTICE TO ATTOR-
NEY GENERAL UNDER TUCKER ACT AND
WORLD WAR VETERANS ACT AS AMENDED.

UNITED STATES OF AMERICA)
State of) SS
County of)
)

HANS A KRUGER, being first duly sworn, deposes and says: That he is the clerk for the attorney for plaintiff in the above entitled action. That on the 7th day of January, 1933, he served a copy of the complaint on file herein, together with a copy of the Notice of Filing Complaint against the United States under the Tucker Act of March 3, 1887, and the World War Veterans Act as amended, on the United States Attorney for the Southern District of California, by giving to and leaving with said U. S. Attorney, true and correct copies of each of said papers.

That on the 6th day of January, 1933, he mailed to the Attorney General of the United States, Washington, D. C. full and complete copies of each of said foregoing papers, by registered mail, postage thereon fully

prepaid, and deposited the same in the United States Postoffice at San Francisco, Calif. addressed as follows: "The Honorable the Attorney General of the United States, Washington, D. C." Registered, Return receipt requested."

Hans A. Kruger

Subscribed and sworn to before me this 17th day of March, 1933

[SEAL]

Thomas A. Daugherty

Notary Public in and for the County of Los Angeles
State of California.

[Endorsed]: Filed Mar. 21, 1933. R. S. Zimmerman,
Clerk By Theodore Hocke, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

ANSWER.

Comes now the United States of America, defendant in the above-entitled cause, by its attorneys, Peirson M. Hall, United States Attorney for the Southern District of California, and Ignatius F. Parker, Assistant United States Attorney, and H. C. Veit, of counsel, and answering plaintiff's complaint, admits, denies and alleges:

I.

Answering the allegations contained in paragraph I of first cause of action of plaintiff's complaint, defendant alleges that it is without sufficient information or belief to enable it to answer, and on that ground denies each and every allegation contained therein.

II.

Answering the allegations contained in paragraph II of first cause of action of plaintiff's complaint, defendant admits each and every allegation contained therein.

III.

Answering the allegations contained in paragraph III of first cause of action of plaintiff's complaint, defendant admits that Frances Hill entered the armed forces of the defendant on the 28th day of March, 1918, and that she was honorably discharged therefrom on or about February 3, 1919.

IV.

Answering the allegations contained in paragraph IV of first cause of action of plaintiff's complaint, defendant admits that during the time Frances Hill was in the service of the defendant she applied for and was granted a policy of insurance in the amount of \$10,000.00. Defendant alleges that said insurance was payable in monthly payments of \$57.50 each in the event the insured suffered permanent and total disability while the same was in full force and effect. Defendant admits that premiums on said policy of insurance were regularly paid up to and including the premium for June, 1919.

V.

Answering the allegations contained in paragraph V of first cause of action of plaintiff's complaint, defendant denies each and every allegation contained therein.

VI.

Answering the allegations contained in paragraph VI of first cause of action of plaintiff's complaint, defendant denies each and every allegation contained therein.

VII.

Answering the allegations contained in paragraph VII of first cause of action of plaintiff's complaint, defendant denies that the insured's claim was denied on December 16th and avers that it was denied on December 10th, 1932 and that the denial was mailed on Dec. 16th. ~~admits each and every allegation contained therein.~~
[Amended by order of 9/24/35 M.R.Winchell Dep.Clerk]

VIII.

Answering the allegations contained in paragraph VIII of first cause of action of plaintiff's complaint, defendant denies each and every allegation contained therein.

IX.

Answering the allegations contained in paragraph IX of first cause of action of plaintiff's complaint, defendant admits that attorney fees are payable as provided by Section 500 of the World War Veterans Act as amended. Defendant alleges that it is without sufficient information or belief on the remaining allegations in said paragraph to enable it to answer, and on that ground denies each and every allegation in said paragraph not herein specifically admitted to be true.

Answering the allegations contained in the second cause of action of plaintiff's complaint, defendant admits, denies and alleges as follows:

I.

Answering the allegations contained in paragraph I of second cause of action of plaintiff's complaint, defendant incorporates herein paragraphs I, II, III, IV, V, VII and IX of its answer to first cause of action herein, in this its answer to plaintiff's second cause of action and makes them a part hereof, the same as if expressly set out in full herein.

II.

Answering the allegations contained in paragraph II of second cause of action of plaintiff's complaint, defendant denies each and every allegation contained therein.

III.

Answering the allegations contained in paragraph III of second cause of action of plaintiff's complaint, defendant denies each and every allegation contained therein.

WHEREFORE, defendant, United States of America, prays that plaintiff take nothing by this action; that plaintiff's complaint be dismissed; that judgment be rendered in favor of defendant for costs incurred herein, and for such other and further relief as may be meet and just in the premises.

Peirson M. Hall
PEIRSON M. HALL,
United States Attorney.

Ignatius F. Parker
IGNATIUS F. PARKER,
Assistant United States Attorney.

H. C. Veit
H. C. VEIT,
Of Counsel.

[Endorsed]: Filed Jun. 14, 1933. R. S. Zimmerman,
Clerk By Theodore Hocke, Deputy Clerk.

At a stated term, to wit: The September Term, A. D. 1935, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 24th day of September in the year of our Lord one thousand nine hundred and thirty-five.

Present:

The Honorable Harry A. Hollzer, District Judge.

FRANCES HILL,)	
	Plaintiff,	) No. 6155-H
vs.	)	LAW
UNITED STATES OF AMERICA,)	
	Defendant.)

This cause coming before the Court for trial * * *
 E. D. Fooks, Esq. now moves the Court to amend Answer, to which motion Alvin Gerlack, Esq. objects; whereupon, the Court orders that Answer may be amended as set forth by counsel for the defendant and the amendment is thereupon made by the clerk.

At a stated term, to wit: The September Term, A. D. 1936, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 8th day of December in the year of our Lord one thousand nine hundred and thirty-six.

Present:

The Honorable HARRY A. HOLLZER, District Judge.

Frances Hill,	Plaintiff,)	
	)	No. 6155-H
vs	)	Law
)	
United States of America, Defendant.)	

This cause coming on for trial; * * *

Counsel stipulate as to certain facts.

Pursuant to stipulation, it is ordered the second cause of action is hereby dismissed. * * *

At a stated term, to wit: The September Term, A. D. 1936, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 11th day of December in the year of our Lord one thousand nine hundred and thirty-six.

Present:

The Honorable HARRY A. HOLLZER, District Judge.

Frances Hill)	
	)	Plaintiff,
	)	No. 6155-H
vs	)	Law
United States of America,	)	Defendant.

This cause coming on for further proceedings on trial;

* * *

The Court instructs the jury; There are no exceptions taken to instructions to the jury; * * *

At 6:10 p.m., in the Court's Chambers, it is stipulated and ordered that the jury be taken to dinner at 6:30 p.m. at the expense of the government, and that if the jury should reach a verdict by 11:00 p.m., a sealed verdict may be handed to the Clerk to be returned in open Court at 9:45 a.m., December 15, 1936, and the jury be instructed to return at said time 9:45 a.m. December 15, 1936.

* * *

At 9:35 p.m. the jury return into court and the clerk asks if they have reached a verdict. The foreman replies that they have and hands the Clerk a sealed verdict.

Pursuant to order heretofore made, the jury are instructed by the Clerk to return December 15, 1936, at 9:45 a.m., at which time the verdict will be opened.

At a stated term, to-wit: The September Term, A. D. 1936, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 15th day of December in the year of our Lord one thousand nine hundred and thirty-six.

Present:

The Honorable: HARRY A. HOLLZER District Judge.

Frances Hill,	Plaintiff,)	
	)	No. 6155-H
vs	)	Law
)	
United States of America,	Defendant.)	

This cause coming on for further proceedings on trial and return of sealed verdict; Alvin Gerlack, Esq., appearing for the plaintiff, who is present, and Ernest D. Fooks, Attorney, Department of Justice, appearing for the defendant; Ben Bell being present as official court reporter; and the eleven jurors being present;

The Court asks the Jury Foreman if the sealed verdict in the custody of the Clerk is similar to the sealed verdict given to the Clerk, and the Jury Foreman answers that it is; whereupon,

It is ordered that the Clerk open, read, and record said verdict, and the Clerk opens same, and reads said verdict, the verdict being as follows:

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA CENTRAL
DIVISION

Frances Hill,	Plaintiff,)	
	)	VERDICT
vs.	)	No. 6155-H
United States of America, Defendant.	)	Law
)	

We, the Jury in the above-entitled cause, find for the plaintiff, Frances Hill, and fix the date of her total and permanent disability from following continuously any substantially gainful occupation from January 1, 1919.

DATED LOS ANGELES, CALIFORNIA, DECEMBER 11, 1936.

MARK H. HARRINGTON
Foreman of the Jury.

[Endorsed]: Filed, Dec. 15, 1936, R. S. Zimmerman,
Clerk, By L. Wayne Thomas, Deputy Clerk.

IN THE CENTRAL DIVISION OF THE UNITED
STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF
CALIFORNIA

FRANCES HILL,)	
)	
Plaintiff,	)	No. 6155-H
)	
vs.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

JUDGMENT

This cause came on regularly to be tried on the 8th day of December, 1936, and was thereafter regularly continued to the 9th day of December, 1936 and thereafter regularly continued to the 10th day of December, 1936 and thereafter regularly continued to the 11th day of December, 1936; Alvin Gerlack, Esq., appearing as counsel for the plaintiff and Hon. Peirson M. Hall, United States Attorney, and Ernest D. Fooks, Esq., attorney, Department of Justice, appearing as counsel for the defendant.

A jury of twelve persons was regularly impaneled and sworn to try said cause. Witnesses on the part of plaintiff and defendant were sworn and examined, and documentary evidence on behalf of the parties hereto, was introduced. After hearing the evidence, arguments of counsel and the instructions of the Court, the jury retired to consider of their verdict, and subsequently returned into court their verdict in words and figures as follows, to-wit:

(Title of Court and Cause)

VERDICT OF THE JURY.

“We, the jury in the above entitled cause, find for the Plaintiff, FRANCES HILL, and fix the date of her permanent and total disability from following continuously any substantially gainful occupation from January 1, 1919.

Dated: Los Angeles, California Dec. 11, 1936.

MARK H. HARRINGTON
Foreman of the Jury”

And the Court having fixed plaintiff's attorney's fees in the amount of ten per centum (10%) of the amount of insurance recovered in this action:

IT IS ORDERED ADJUDGED AND DECREED that Frances Hill the plaintiff, do have and recover from the United States of America the defendant, the sum of Nine Thousand Six Hundred and Sixty Six and no/100 Dollars (\$9,660.00), being one hundred and sixty eight (168) accrued monthly installments of insurance at the rate of \$57.50 per month beginning January 1, 1919 up to and including the monthly installment due December 1, 1932, less plaintiff's attorney's fees as herein provided.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant the United States of America, deduct ten per centum (10%) of the amount of

insurance recovered in this action, and pay the same to Alvin Gerlack, of San Francisco, California, plaintiff's attorney, for his services rendered before this court, payable at the rate of ten per centum (10%) of all back payments, and ten per centum (10%) of all future payments which may hereafter become due on account of such insurance maturing as a result of this judgment, said amounts to be paid by the defendant's Veterans Administration or its successor if any, to said Alvin Gerlack or his heirs, out of any payments to be made to said Frances Hill or her beneficiary or estate in the event of her death before two hundred and forty (240) of said monthly installments have been paid.

Dated: December 17, 1936.

H. A. Hollzer
District Judge

Approved as to form:

Ernest D. Fooks

Attorney Department of Justice

Judgment entered and recorded Dec 18 1936 R. S.
Zimmerman Clerk. By L. Wayne Thomas Deputy Clerk.

[Endorsed]: Filed Dec 18 1936 R. S. Zimmerman,
Clerk By L Wayne Thomas Deputy Clerk.]

[TITLE OF DISTRICT COURT AND CAUSE.]

BILL OF EXCEPTIONS

BE IT REMEMBERED that heretofore, to-wit, on the 8th day of December, A. D. 1936, in the City of Los Angeles, State of California, in the said District, upon the issues joined herein, the above entitled cause came on for trial before the Honorable Harry A. Hollzer, a Judge for the Southern District of California.

Plaintiff appeared in person and by her attorney, Alvin Gerlack, Esq. Defendant, United States of America, appeared by Peirson M. Hall, United States Attorney for the Southern District of California, and Ernest D. Fooks, Attorney, Department of Justice. A jury having been duly impaneled and sworn to try said cause;

WHEREUPON the following proceedings took place:

“The government admitted the following facts: That plaintiff is a resident of the Southern District of California and the County of Los Angeles therein; That the cause of action contained in paragraph 2 of the complaint is brought under the provisions of the World War Veterans’ Act, and any and all amendments thereto; that plaintiff enlisted as a nurse in the Army Nurses’ Corps on March 28, 1918, and was discharged February 3, 1919; that during the war she took out a policy of war risk term insurance in the amount of \$10,000.00, payable in the event of permanent and total disability at the rate of \$57.50 per month; and that the premiums were paid through the month of July, 1919, which would make the insurance in force up to and including midnight of August 31, 1919, by reason of the 31-day grace period; that the allegations of paragraph 7 of the complaint, alleging a

(Testimony of Frances Hill)

disagreement, are admitted; that all of the allegations of paragraph 9 of the complaint are admitted by defendant; that plaintiff's insurance was in force and effect until midnight August 31, 1919."

"FRANCES HILL

the plaintiff, called as a witness in her own behalf, having first been duly sworn testified under oath as follows:

DIRECT EXAMINATION

I entered the Army in Little Rock on May 28, 1918. I went overseas with Medical Unit T. It was a part of the medical unit of the army. I was born in Batesville, Arkansas, about 80 miles from Little Rock. I took my training as a nurse at St. Vincent's Infirmary, Little Rock, Arkansas. I graduated from there as a graduate nurse. At the time I went into the Army I was doing private duty nursing in Little Rock. Most of my work was at St. Luke's under Dr. Kirby and Dr. McGill. They were the staff doctors. I had no serious difficulty with my health at the time I went into the army. I went through training without any loss of time from sickness. At several different times I was given physical examinations by the army doctors when I went into the army.

The Government then stipulated that Miss Hill was in good health at the time she entered the army.

(Witness continuing) When I went overseas I sailed from New York sometime during the 1st of May, 1918. I went to Liverpool at first but I didn't remain in Liverpool that time. I was sent to the Southern part of England, near Southampton. Later I went back to Liverpool.

(Testimony of Frances Hill)

I spent about six months the latter part of 1918 at Liverpool with the same medical unit. We were not all together but practically all the nurses I started out with were in Liverpool with me. My commanding officer at Liverpool was Major Wolfsohn for awhile. We had another commanding officer at the time I was transferred to Liverpool. While I was in the service as a nurse in Liverpool at this army hospital under Major Wolfsohn the most unusual thing that happened to me so far as my health is concerned is that I was working hard. There were 26 of we nurses. We were supposed to have a 500 bed hospital but when the influenza epidemic came along we crowded in patients until we had a thousand patients in a 500 bed hospital and only 26 nurses to take care of that number. We didn't have any extra nurses to take care of this load. There was no place to get extra nurses from. This happened the latter part of September in 1918. We were supposed to be on duty under normal conditions—supposed to work eight hours a day. In October, 1918, at the time of the influenza epidemic after we had begun to receive the influenza patients, we had orders not to go off duty when night came. The beginning of my experience with the flu was on a Sunday morning, and we had orders not to go off duty that night, and I worked 36 hours without going to my room at all, and the food that I ate, I ate while standing up. I didn't sit down during that time. We received these extra patients from the convoy from the States—transport from the States. I was working hard. I had been taking care of tuberculosis and receiving influenza patients and of course we had to put the influenza patients wherever we could find room for them. At that time I was taking care of influenza, also some

(Testimony of Frances Hill)

tubercular still. Concerning the effect this had on me personally—I was working hard. Of course, to begin with, I worked 36 hours without any time off, and then I would have four or five hours, and probably six hours' sleep, and worked the balance of the time. I didn't go to the dining room for my meals; I ate my meals on the ward whenever I had time to eat at my convenience, and of course, the patients were—quite a few of them were delirious and trying to climb out of bed and coughing, and especially one patient that I tried to hold in bed—I did hold him in bed. He was dying, coughing, and expectorated all over me. He spattered all over my face and glasses and cap. The mask that I was supposed to wear over my nose and mouth had fallen down in my struggle to try to hold him in bed, and I didn't turn loose of the patient, though, so long as he lived. When he quit breathing I took a piece of gauze and Lysol solution and washed off my glasses and my face, washed the pus off my lips, but I had to wear my uniform until such time as I could go off duty and change it. I wore it on and worked with this pus spattered all over me, all over my uniform and cap. The next thing that happened to me that was unusual so far as my health was concerned—I was still working long hours—at least 18 hours a day when I came down with influenza and pneumonia; that was sometime during the first of October. I was treated in my quarters as there was no room in the hospitals for the sick nurses. I was treated in my quarters by Major Wolfsohn. He was present at the time. He treated me personally, he visited me every day. I did not have a nurse to attend me . . . there was no nurse. I took care of myself the best I could. There were 3 of we girls in a small room together

(Testimony of Frances Hill)

—all nurses—all sick. I was the only one that had pneumonia. The others had influenza. We took our own temperatures. My temperature at that time ran about 103 and 104 for about a week or ten days. I was in bed one morning when the doctor called on me, and my temperature was normal and, of course, I had a very bad cough at that time, and I was weak. I took my pulse at that time. I had a rising temperature, my pulse was rapid. I felt weak and bad, but I felt better this Monday morning. One morning when Dr. Wolfsohn called on me, and he asked me if I felt like dressing myself, and I told him I did. He told me to dress myself that afternoon and if I felt like it to walk out as far as the big gate, which was probably a hundred feet from the front door of the administration building. The nurses' quarters were in the administration building.

I dressed myself and, of course, I really didn't feel like walking out there, but then I was trying to make believe. I walked out to the big gate very slowly, and on my way back I collapsed on the doorsteps. My heart pounded like it would stop. In fact, I think it did stop just for a second. I just collapsed, I was so weak I couldn't get any further. I lay there for a few minutes, and there was a nurse came along and helped me back to my bed—a Miss Ready, one of our nurses there. Then I stayed in bed. I undressed myself and went back to bed, and stayed in bed until the next morning. I went on duty the next morning. I was still awfully weak, my heart pounding every time I would walk. I went on duty just the same, we needed the nurses so badly. The nurses were all working until late at night. After that I stayed on duty for ten days, or a week—I don't remember how long—it was

(Testimony of Frances Hill)

only a short time; but after I had been on duty a day or two I found I was having a rising temperature. I found it was 101, and finally it was 103. This was while I was nursing on these wards. I just turned weak on the ward and I dropped a glass of thermometers and broke the whole business, so I was ordered back to bed then by Dr. Wolfsohn. This time they admitted me to the ward, like they did the other patients. At that time I was treated ten days or two weeks, I believe. Dr. Wolfsohn treated me. He continued to treat me for that time. He wasn't the ward's doctor. There was another doctor, but Dr. Wolfsohn also visited me at least once a day. After that I felt better. My temperature went down to normal—that is, they found it normal at least. I felt pretty good, then I went back on duty again. I left Europe to come back to the States the latter part of December, 1918. At the time I left England I felt very badly. I coughed all the time; I never felt like getting out of my bed in the morning when I left Liverpool. Then I had orders to come back to the States. When I came back to the States I landed at Hoboken. I didn't go back on duty then. I wasn't able to do duty. I was in bed all the way home on the boat, and when I arrived in Hoboken I was sent to—it was the Army hospital at that time, but it was the old Polyclinic Hospital. I don't remember what number—I believe, Army Hospital No. 4.

I stayed there a few days. I wasn't able to do duty, and I stayed there only a few days when I was sent to the Hotel Albert. At that time the Hotel Albert was the headquarters for overseas nurses. In other words, the Government was using it for a barracks for the nurses. I wasn't on duty at all at the Hotel Albert. I spent my

(Testimony of Frances Hill)

time in bed there. I left the army—I left New York the latter part of January of that year. I was sick in bed when I was notified to go down to get my traveling orders, and I stood in line with 300 other nurses to get my traveling—I was not given an examination at the time I left the Hotel Albert to go to my home. I didn't see a doctor. If he was a doctor I didn't know it. The man that gave me my traveling orders, he didn't—he didn't appear to be a doctor. When I left I left the Hotel Albert for home the latter part of January. I was discharged from the army February 3, 1919. I was in the army during the time I was on the way home and after I got home.

After I got back to Little Rock I rested for awhile. I didn't feel good at all when I went to Little Rock, and, of course, I rested for awhile and I was examined by Dr. Kirby and Dr. McGill. This was along the 20th of January when I was examined in St. Luke's Hospital. I arrived back in Little Rock on the 16th, but I had been home a few days before I had this examination. I went there for this examination because I was sick. They were the doctors that I had worked under before I went away. I had a rise of temperature every day. I had a very severe cough, and my heart was pounding every time I did any exercise of any kind, and I had these weak spells at any time I tried to go up and down the steps very much, and I would almost collapse. In fact, I had to be helped up the steps to the X-ray rooms in St. Luke's Hospital at the time that my chest was X-rayed. That examination was prior to my discharge. It was around the 20th of January and my discharge was February 3rd.

Dr. Kirby and Dr. McGill treated me for my chest. They treated me also for my stomach which was upset.

(Testimony of Frances Hill)

They prescribed something for my stomach. Dr. Kirby gave me several different prescriptions. Dr. Kirby is now dead. He passed away in 1922. He gave me a prescription for my cough. After that I tried to work and follow my occupation as a nurse. I tried to work—I registered for duty. It must have been two or three months after I had been home when I registered for duty, and for light cases—not night work. I worked in Little Rock on short cases. I don't believe I was ever able to continue one case that lasted longer than three or four days, because I was weak. I couldn't go up and down the steps without resting. My heart pounded and I coughed. The doctors advised me to go to a dry climate for my health, which I did. I stayed around Little Rock before I went West from the time that I arrived home in January until around the 1st of November of that same year, 1919. There is no way to say correctly how much I worked during that interval from January or February up until the time I left in November of 1919—how much I actually worked, putting in time, working on the job for which I was paid. I worked very little. I worked three or four days at a time. I didn't work enough to pay my expenses at any time. It wouldn't amount to a half or third of the time. I wasn't registered for duty half of the time—I didn't work one-third of the time while I was in Little Rock because my temperature was never normal during that summer. I only registered for duty half of the time, that means I could work if a call came in, that is what it would mean if I was registered. After I had been home two or three months is when I registered. My name would be off the register at different times until I left in November, 1919. When I went on a case I would take it off. It

(Testimony of Frances Hill)

might not be put back on for—for instance, if some friend should call me on duty, not call me through the registry, my name being on the register didn't mean an awful lot. Any time I wanted a call from the registry I would call up and register. After I had once placed my name on the nurses registry, then every time I had gotten a job I would have to wait and finish the job before I could be registered again . . . for call. My name would be there but it wouldn't be for call—on call. In other words, until I notified them that I had finished a job they wouldn't expect to call me. When I was on call I was available for duty. I was on call very little of the time that summer, I couldn't say how much. I was available to go out on a case from the time I registered, which was two or three months after I came back, until I left in November 1919. I wasn't on call one-third of the time, I don't believe. Of that one-third of the time that I was on call, I worked very little during that summer. I couldn't say just how much I worked, but I worked very little. I didn't work enough to pay my room and board, I know that much.

I left Little Rock on account of my health, cough and these continuous weak spells that I would have. I thought that I might find a climate that would be better for me. I went to Tucson. I came by way of El Paso but I didn't stay at El Paso at that time. I do not have any acquaintances or friends in El Paso. I did not have any friends or acquaintances in Tucson. I had never been there. I didn't know a soul in Tucson. I remained there—arrived there after the first of November, 1919, I stayed the latter part of February, 1920. While in Tucson I tried to work at different times but I had pleurisy something terrible in Tucson, and I coughed all night. And I would put my

(Testimony of Frances Hill)

name on call and if I was called out on duty, I wouldn't work because I had no one to befriend me there, and I couldn't stand the work at all. I probably worked two weeks out of the four months; no longer than that. While in Little Rock out of the six or seven months, I was on call at the registry in Little Rock, after I came back, putting it all together I probably worked three or four weeks out of that six or seven months. I left Tucson because I wasn't any better. I didn't seem to be any better there, so I decided I would go back to El Paso and try. I didn't have any friends at all in El Paso. At that time I didn't know a soul in El Paso. When I got to El Paso I rested a few days and, as usual, I registered for duty. I stayed at El Paso after I went there from Tucson the latter part of February, 1920—I was out of the city at different times but I called that my home until April 1922, but I stayed all the time there. While I was in El Paso I did X-ray work while I was there. This vocational training I did in 1921 with Dr. Cathcart. That is vocational training under the Veterans Bureau of the Veterans Administration, it was the Public Health at that time—it was the Federal Board for vocational training. I was in vocational training six or seven months. The government gave me vocational training—they advised me that it would be shorter hours and that I might be able to do the work.

I didn't get along so well in X-ray work. I found it very interesting work and I like it very much but there was a part of the work that was entirely too heavy for me to do, such as winding up the X-ray tables for the fluoroscope, the old fashioned X-ray tables had to be used for the fluoroscope, and that was too heavy for me to do. I would have to stop to gasp for breath any time I tried to

(Testimony of Frances Hill)

wind this table up. It was just a flat table; it was used for X-ray. When they used it for the fluoroscope we would have to wind a big lift to bring it straight up and down, in other words, it would have to be vertical. It was rather a heavy table. It would wind up like all X-ray tables. The effect of this winding of that table had on me personally was to make me very short of breath. I couldn't wind it up without resting two or three times during the time I was trying to wind it up, and of course that would delay everything and Dr. Cathcart didn't like me to wind the table up. Going back to the time of my discharge, I spoke of having certain symptoms. I said I had pleurisy. I had pleurisy from the time I had pneumonia while I was in Liverpool. The left part of my chest is where I had these pleurisy pains. The pleurisy pain was in the left (illustrating). Sharp pain in my left shoulder any time from exertion. I am indicating the lower part of my back, the left side (indicating), is where I had the most trouble with pleurisy pains. The sharp pain in my left shoulder, that was different. Any time from exertion it was in my left shoulder. The first time I noticed that was the time I collapsed on the steps when I walked out to the big gate in Liverpool. I still have those pains. I have a sharp pain in my shoulder now, yes. I have the pleurisy pains occasionally. Concerning how frequently I would have these pleurisy pains from the time I had them in England in 1918 up to the present—any time from exertion; going up and down the steps; anything that would cause shortness of breath. I am speaking both of the pleurisy pains and the pain in my shoulder; the pleurisy pains and the sharp pain in the shoulder are both brought on from exertion, from walking up and down and going down the steps, especially if I try to hurry.

(Testimony of Frances Hill)

Going back to the time I was discharged, so far as bodily sensations are concerned, with particular reference to my health, I felt, well, at times I felt a little better than I did at other times, but I continued to catch cold very easily. I have a cold now. It has been that way throughout all these years. I catch cold very easily, and I cough, and then it seems to get a little better and I continue to have these weak spells. Describing these weak spells, well, from any exertion like going up and down the stairs, working for a few hours at a time, all of a sudden I turn weak and sometimes I get over it in a short time. There have been times when I didn't get out of my bed for three weeks when I had one of these weak spells. Concerning how long these weak spells would last when they first started—the first one was in Liverpool, England. I didn't get entirely over it that day but I felt well enough. Speaking in reference to these weak spells that I have described and how frequently they have been from the time I had this initial attack in England—no certain time. It might be—if I am not doing anything, if I am in bed, why of course I don't have them, if I am resting most of the time. The frequency with which I would have them are—any time from over-exertion; any time from work. I couldn't tell you how many of these spells I have averaged a year since 1917 or 1918, but I would have them often. I have had them often—as often as I exert myself. Every time I have tried to work I would have to go off duty any time I happened to be on a hard case. It has been oftener than once a month; sometimes I would have them every day. When they start they do not always last the same. As I have said before, one time was three weeks. I was too weak to go to the bathroom. Concerning the colds and how long they have lasted—no certain time; some

(Testimony of Frances Hill)

times it was better in a few days, and sometimes it has been months. I feel like I have the same cold or concurrent colds. I am catching cold all the time. I have never been entirely over that feeling of catching cold all the time—cough in the morning. I am always weak in the morning. I have had that all the time since 1918. I am short of breath all the time. Sometimes I feel a little better than other times. Compared with the way I felt at the time of the last trial in October I feel a little better now than I did last summer. I was in bed nearly all last summer, but I felt a little better during the past month than I did last summer, but still, I have had the weak spells. I have had the pain in my shoulder and the shortness of breath, and at times it seems my heart has stopped entirely. I will jump up in the middle of the night and I will get up and gasp for breath, and I will believe my heart has stopped for a space of seconds. That happens any time. I go to bed unusually tired. Of course, I have that tired feeling every morning when I get up—so tired, and tired in my chest, that I can hardly breathe, and at times I have felt I couldn't go on any longer when I was on duty; but, of course, I would go on as long as I could.

Getting back to my industrial history—I covered 1919 and 1920. In 1919 I was in Little Rock; in 1920 I was between Tucson and El Paso. Then in 1921 I was also in El Paso. I left El Paso in 1922. In 1921 I had the vocational training. I didn't try to nurse, unless it was a couple of days at one time. The latter part of the year I worked two or three days during the latter part of 1921 as a nurse, but I had the vocational training at the beginning of the year. At that time work was plentiful.

(Testimony of Frances Hill)

It was always plentiful; they were always calling for nurses. Nurses were scarce and work was plentiful.

In 1922 I went to Globe, and took a position in Globe, Arizona, I left El Paso because I was always looking for an easier job, something that I could do. I wasn't able to do the work in El Paso, and the nurses' registry in El Paso sent me to Globe, Arizona . . . was supposed to be an easy position. I worked there six weeks or two months, I would say. I quit that job because I couldn't stand the work. It wasn't hard work but I was short of breath and I coughed all the time, and I had this severe pain in my left shoulder and pleurisy, and also the pain in the right knee that has bothered me. I first had the pain in my right knee in 1922 when Dr. Kirby removed my tonsils in 1919. Dr. Kirby removed my tonsils in June or July, it was in the summer. The pain didn't go out of my knee when he took out my tonsils. You see, I had a rise of temperature all that summer. It would be a hundred and a hundred and six-tenths all that morning, and he treated me and advised me to have them taken out. I didn't feel any different after than I did before. I had the pain in my knee and sometimes, when I got weak, at first I had to hold onto the bannister. After I was in this hospital six weeks in Globe I rested for a while, and I took a position in the Inspiration Hospital in Miami. I worked at the hospital in Miami three or four weeks. I quit because I couldn't stand the work. During the balance of 1922 I rested a little while and went to Kingman and I took a position. I couldn't stand the work there. In Kingman I was in a general hospital. I left there in November, 1922, and went back to Phoenix, and I had a severe cold. I worked in Kingman two months . . . October and Novem-

(Testimony of Frances Hill)

ber . . . I mean September and October . . . I left that job because I couldn't stand the work. I didn't feel any different on that job than I had on previous jobs. I had the same symptoms. I had a severe cough. After that I went to Phoenix. I had a severe cold when I got to Phoenix and had a high temperature, and I went to bed . . . still in 1922. The balance of 1922 I didn't do anything. I stayed in bed and rested and Dr. Tuthill in Phoenix treated me. In 1923—the first of January 1923 I started to work for Dr. Wheeler at the Indian Sanitarium . . . that was a government job. Dr. Wheeler was a government doctor at the time in the Indian Service. I worked in the Indian Sanitarium until the latter part of July (1923) . . . I went to work the 1st of January, and I was there until the latter part of July; but I didn't work all the time. I had a two weeks vacation, and I was sick at different times. I was in the Indian Sanitarium several months. I didn't get along very well with my duties there in the sanitarium. I didn't have bedside nursing to do. I had dispensary work, and I would work a couple of hours in the mornings, and sometimes that would be all the work I would have to do; but I wasn't able to hold the job at all. I was weak and tired. I was weak and tired, I was too weak and tired to get out of bed some mornings, and I worked there every day I could work while I was there. I quit the job in July on the advice of Dr. Wheeler. He advised me to take an extended rest. I wasn't Civil Service there. I was temporary. A temporary appointee. My salary on that job was about \$80.00 a month, I believe. That included my room and board. I don't remember what they deducted for room and board. The salary was supposed to be so much a year and so much deducted for my room

(Testimony of Frances Hill)

and board. That was in July, 1923 I quit the Indian Sanitarium. The balance of that year I rested until the latter part of October, I believe it was, when I went to work in Hayden, Arizona. . . . That is the Dr. Wheeler whose deposition is on file here. . . . I worked in the Smelter Hospital in Hayden—I was there until April the next year, 1924. I was doing very light work there. Two or three weeks after I went there we didn't have a patient in the hospital. I had to answer the telephone, and remove a cinder from a man's eye, or dress a finger, or do something like that, and receive the doctor's calls. That was my work for two or three weeks, and after I went there we had a few patients during the winter—a couple or three bed patients during the winter. When I wasn't working there and didn't have any particular duties to perform I rested in bed any time I had nothing else to do. This was permitted by my employers. They understood that I was to rest when I wasn't working. I had a bed in the hospital when I rested, and I could hear the telephone ring and the door bell ring and I could get up and answer, and go back to bed. I left that job because I couldn't stand the work any longer. I wasn't able to get out of bed—pleurisy and shortness of breath—that was April, 1924, I quit there.

The balance of 1924—I didn't work that summer. I went back east and spent the summer with my people there, back at Little Rock. That is not the first time that I had been back to Little Rock since I left there in 1919. I was back there every year during that time. They sent for me every year. Some time during the year I would spend two or three weeks back there. During the summer I had taken the Civil Service examination for the position

(Testimony of Frances Hill)

at the Indian School hospital in Phoenix and the latter part of September I went back to Phoenix to the Indian School Hospital. I was not given a thorough physical examination in connection with that Civil Service Job, just a routine—asked questions. The Veterans Bureau had examined me in the spring of 1924—Dr. Fred Holmes. In the winter—it might have been in the winter of 1924, I believe it was—I held that job in the Indian School from the latter part of September until February. That is from September 1924, to February 1925. Well, the work—I didn't get along very well on that job. There again I had a bed. My room joined the girls' ward. It was a regular school hospital—school children were my patients and my room joined the girls' ward, and there again I had a cold. I had a telephone in one room; I could rest when I wasn't working, and answer the calls, which I did, and managed to get by as best I could until February. I quit in February because I couldn't stand the work any longer. I had pleurisy and this weakness, this shortness of breath. Dr. Wheeler, the government doctor in the Indian service, treated me while I worked at the Indian Sanitarium. No government doctor treated me while I was at the Indian school. The balance of 1925—I didn't do anything that summer. In the fall of 1925 I did a couple of private cases, short cases, when I felt like going out on duty. At times I had my name registered at the registry in Phoenix during this time. Concerning the method of registering at the registry: I registered at the registry. I went up there and told them I am a nurse and available for duty, and they registered my name. When I say on call I mean they have my name on the registry and somebody, we will say, comes in and asks for a nurse,

(Testimony of Frances Hill)

and my name is there and they send me out on a case. The registry has a place to slip my name back to one side. I still belong on the registry, but I won't be on call. Suppose I take a case and am on the case for three or four days. Then I go off of it—I don't notify the registry until I am ready to go back on duty. If I am on a couple of days and go off, the registry wouldn't know anything about it for months. The registry keeps my name to one side until I notify them I am ready for duty again. The balance of 1926 after I left the Indian School, I did some private duty nursing. During 1926 I registered for private duty nursing like the short cases. I did some private duty nursing. I was never able to take care of a case that was very hard, and worked only a few days at a time without rest. I have never worked a week straight at any time without rest. I never stayed on a case more than a week—not a week. I have never worked on a case more than a week. Sometimes, one day I wouldn't be able to go on duty next morning, wouldn't be able to get out of bed. Nurses were scarce during that time. There were a lot of calls for nurses. If I were to put all the days together when I did private nursing in 1926, it probably would not amount to four or five weeks during the year. I didn't work very much during 1927. I was sick in bed part of the time, and part of the time I was up. I felt a little better at times, and some private duty; never enough to pay my expenses at any time. In the winter of 1928 I was in bed practically all winter with a woman taking care of me. In 1928 I didn't work from Christmas, 1927, until April I believe it was, 1928, because I was sick in bed all that winter. The balance of 1928 I would take a short case occasionally. If I were to put all the days together I worked, it would be about the same as I had been working

(Testimony of Frances Hill)

before that time. I would work a few days at a time and sometimes I would rest, and sometimes I was able to take care of myself, and I was ill, and then again I wasn't able to take care of myself. I worked when I felt like it and I couldn't say positively how *many* I worked.

In 1929 I was sick in bed all winter—the winter of 1928 and '29—the beginning of 1929. I didn't work from January until the spring again. I was in bed most of the time from the fall of 1928 to the spring of 1929 of that winter. The balance of 1929 I had a few short private cases, worked when I felt that I could. I did not work for any copper company hospital, either in 1928 or 1929.

At this stage of the trial the following proceedings took place:

BY MR. GERLACK:

Q When did you first consult Dr. Cohn?

A In 1929, the fall of 1929. It was in December. I was in Los Angeles, and I went to Dr. Cohn, for an examination.

Q That was Dr. Cohn of Los Angeles, here?

A Yes.

Q How did you come to go to him?

A He was recommended to me.

Q What is that?

A He was recommended to me.

Q Why did you go to him?

A Oh, I was sick. I was ill with pleurisy; same symptoms—weakness and shortness of breath, cough, rise of temperature.

(Testimony of Frances Hill)

Q What brought you to Los Angeles on that occasion?

A I came with a patient over here.

Q And while here with your patient, you consulted Dr. Cohn?

A Well, I wasn't with the patient when I—after I brought him over here I went to see Dr. Cohn, and I stayed over here a little while.

If I were to put all the days together that I worked in 1928 doing private nursing, I couldn't say how many days I worked, approximately. Probably around six—four or six weeks, probably. I couldn't say for sure if that would be correct. But the longest period I ever worked in a stretch during 1929—I have never worked a week at any one time without relief since 1918 while ill with pleurisy and pneumonia overseas. I have never worked a week at any one time without relief. I had one or two private cases during 1930. I was in Phoenix all this time. After I came out with this patient to Los Angeles I went back to Phoenix immediately. I had my name on the registry at this time. I had belonged to the registry all that time. I had a couple of private duty nursing cases in the first part of 1930. I was sent by the nurses' registry to Superior, Arizona—sent by Dr. Swackhammer. If I were to take all the days together, putting all those days of private duty nursing together, up to the time I went to Superior—during 1930, I didn't work very much; probably two or three weeks. I started in to work at Superior the first of September, 1930, and I stayed there until the first of February, 1931. My duties on that job were general nursing—I did the buying of the groceries for the hospital—'phone orders. It was a very small hospital. We didn't have a patient in the hospital one time for six weeks,

(Testimony of Frances Hill)

just a small mining hospital. When I was supposed to be on duty there I spent my time—I had a bed in the hospital where I rested all the time. I could answer the telephone and the door bell, and it was opposite the dressing room door, and whenever a patient came in to have a finger dressed or have a cinder removed from the eye, I could get up and do that and go back and lie down, and I spent most of my time lying down. The Magma Copper Company owned the hospital. Concerning how I got along on that job as far as my health was concerned—how I felt, I always felt weak and tired and so tired in my chest that I could hardly get out of bed. At times I felt I couldn't go on any longer, but due to the fact that at times we didn't have a patient in the hospital, made it possible for me to stay on duty. And my knees gave me quite a lot of trouble that winter too. Dr. Swackhammer treated the rheumatic pain I had in my knee. It was treated by Dr. Swackhammer while I was there. During the rainy season it was quite severe and Dr. Swackhammer treated me. That is the same pain in the knee that I described as having in 1919. I left that job because I couldn't stand the work any longer. I couldn't get out of bed in the morning. I quit there in February, 1931. The balance of 1931 I rested. I came to Los Angeles—I came to San Fernando, California—that same year, 1931; that is a government hospital out there, at San Fernando. I was a patient in that hospital about eight months. I left there in November of the same year, 1931. They didn't give me any treatments, they just had me rest. I was in the T.B. ward there. I left San Fernando Hospital in November, 1931. I haven't done anything in the way of work since then.

(Testimony of Frances Hill)

At this stage of the trial the following proceedings took place:

BY MR. GERLACK:

* * *

Q What have you done since then?

A I haven't done anything in the way of work. I look after my—

Q (Interrupting) You haven't taken any cases at all?

A No.

Q. What other hospital have you been a patient in outside of San Fernando?

A You mean back during these years?

Q Any time since you were in the hospital as a patient in Liverpool, England?

A In 1920 I was a patient at Fort Bayard, New Mexico, in the tubercular ward.

Q That is the Government Veterans Bureau hospital there at Fort Bayard?

A Yes, it was called the Public Health hospital at that time.

Q What kind of a ward were you treated in there?

A Tuberculosis.

Q How long were you a patient at Fort Bayard?

A About three months.

Q What other doctors have treated you since 1919, besides Dr. Kirby and Dr. McGill?

A In El Paso Dr. Short treated me, and Dr. Long and the Government doctors were the ones who advised me and sent me to the hospital at Fort Bayard.

(Testimony of Frances Hill)

Q What doctor sent you to Fort Bayard?

A Dr. Tappin of El Paso. He was of the Veterans Bureau. He worked for the Government.

(Witness Continuing) I didn't pay premiums on my insurance after July of 1919, because I wasn't able to work to keep it up. I put in a claim for this insurance—filed the claim—on June 18, 1931, for insurance benefits. The first time that I heard I had any rights and had a right to assert a claim for this insurance was after I came to San Fernando. It was some time during the spring I would say, in May. I don't remember what day or what month it was, but I was admitted in the San Fernando hospital in April, and it was some time after I was admitted there that the Legion Commander called on me and he learned of my condition and he advised me about the insurance. I didn't know it. I didn't put in a claim prior to that time because I didn't know I could—that is the first time I knew I had a right to assert a claim.

CROSS EXAMINATION

The Government then introduced and had marked for identification as Defendant's Exhibit A, the Adjutant General's office record concerning plaintiff's military service and hospitalization during her service. There was then marked for identification government's Exhibit B, a statement made by plaintiff direct to the district vocational officers, District 14, Dallas, Texas, dated November 24, 1920. The government then offered and had marked for identification defendant's Exhibit C, which was an application for examination filed by the plaintiff for United States Civil Service, dated May 29, 1924. The government then offered and had marked for identification defendant's Exhibit D, being a certified copy from the Gen-

(Testimony of Frances Hill)

eral Accounting Office of the pay-roll record of payments made to the plaintiff as employee of the Phoenix Indian School, Phoenix, Arizona, the certificate having been issued February 27, 1923. The government then offered and had marked for identification government's Exhibit F, which was a document from the Adjutant General's office, dated November 5, 1925. It was then stipulated by counsel that the Adjutant General of the Army is the Secretary of the Army—the Secretary of the Army for the Secretary of War, and that all records of the army are kept in the office of the Adjutant General. The government then offered and had marked for identification Government's Exhibit next in order for identification, which was the Arizona State Nurses' Association, District No. 1, Nurses' Official Registry, Incorporated, Phoenix, Arizona, application for membership dated October 5, 1929, which document was identified by the plaintiff as being in her handwriting.

(Witness continuing) After I left El Paso about 1922, I went to Globe, Arizona, Gila County Hospital. Globe is approximately 96 miles from Phoenix. There is no mountain between Globe and Miami. It is just a little drive—they practically join.

At this stage of the trial the following proceedings took place:

BY MR. FOOKS:

Q Then, you remained in Phoenix, as I understand it, or in or near Phoenix? That is, you were in Superior, Hayden, Kingman and Phoenix, from 1922 until approximately 1929 or '30, is that correct?

A Yes, I was there nearly all of the time. At different times I was away from there.

(Testimony of Frances Hill)

Q Yes.

A I went East at different times and spent—

Q (Interrupting) When you say you “went East” you mean you went home to visit your people?

A Yes, yes.

Q Did you ever know Miss Florence L. Hicks?

A Yes, I have known Miss Hicks in a casual way.

Q She was a nurse was she not?

A Yes.

Q And a registered nurse in Phoenix?

A Well, I suppose she is. She is the registrar at this time, and she would have to be a registered nurse in order to have the registry.

Q Prior to that time when she had the registry, she was a nurse subject to call, the same as other nurses?

A Yes.

Q And you have worked with Miss Hicks on different cases on several occasions, have you not?

A I recall Miss Hicks. The first time I ever met her she relieved me on a case at the Good Samaritan Hospital. It was a very sick patient. I was called on the case sometime during the morning,—I would say, ten o'clock—sometime, anyway, during the morning, and the work that was required was too strenuous for me, and we had to call a relief nurse in the afternoon. I wasn't able to remain on the case because I couldn't. Due to my shortness of breath I couldn't hurry, and Miss Hicks was called to relieve me on that case, and that was the first time I recall meeting Miss Hicks.

Q You don't remember about when that was?

A Well, that was the latter part of 1926, I believe.

(Testimony of Frances Hill)

Q Yes. Now, at that time in 1926, Miss Hill, they had what was known as a two-shift system in vogue in Phoenix, did they not? In other words, 12-hour shifts?

A Well, that was one shift at times. You might stay longer with the patient if there wasn't very much to be done for them. Then, we had the afternoon off with the patient, if there wasn't an awful lot to be done with the patient.

Q Of course, if the patient was very sick, it was necessary to be on duty for the entire shift?

A And sometimes four nurses; sometimes two nurses to the shift, if they are very sick.

Q But, ordinarily, with the average case that had two nurses—day and night nurse—each nurse was on duty 12 hours?

A Yes, we had a shift that there was two nurses on duty each twelve hours.

Q Yes. After Miss Hicks took over the registry, who did she succeed?

A Miss Case—Bertha Case.

Q Miss Bertha Case?

A Yes.

Q She first had the registry and then Miss Hicks succeeded her? And you registered with that registry after Miss Hicks took it over, did you not?

A I have been registered with it at all times since 1922, before Miss Hicks took it over.

Q So that just brings us back to the possibly confused idea of just what registration means. In other words, you first registered in January 1922, did you not, with Miss Case?

A No, it was the latter part of 1922.

(Testimony of Frances Hill)

Q Yes.

A Because I had never been in Phoenix in January 1922.

Q Well, then, we will say sometime during the year 1922.

A The latter part.

Q The latter part. Then, from then on until you left Phoenix you were always registered with that registry, were you not? Your name was on the books as a registered nurse?

A I belonged to the Arizona State Nurses' Association.

Q Yes.

A So they always knew where I was. That is, they knew whether I was doing my work in Arizona or not, what I did. They didn't know all the time just where I was, or whether I was working or not, but my name was with them all the time.

Q So, when you were away on these various positions you had with different institutions, of course, they knew that you were placed at that time?

A They knew they sent me there. They didn't know how long I stayed.

Q Then you came back and advised them you were subject to call?

A They knew I was somewhere until I advised them, but they didn't know I was at that place. They still had my name, and they might send me my mail and say "For-

(Testimony of Frances Hill)

ward", but my name was still in the Arizona State Nurses' Registry during that time.

Q So, when you came back from those different institutions after your termination of service with them—that is, the period you were in Hayden, Kingman—and when you returned to Phoenix, when you felt able to go back to work you went back to the registry and notified them that you were then subject to call?

A I only had to call them up.

Q Yes.

A At different times, Mr. Fooks, I had registered for duty—do you mind if I tell this in my own words?

Q Sure, go ahead.

A One time, I recall that I was registered for duty and Miss Hicks called me and I was so hoarse I could hardly talk, and she didn't recognize my voice, and I said, "Well, Miss Hicks, I am sorry, I am not able to go on duty." So I might be on call, and when I was called I wasn't able to go on duty.

Plaintiff was then shown defendant's Exhibit F for identification, which was an application for the Arizona State Nurses' Association, dated October 5, 1929, which statement she identified as bearing her signature, together with her own handwriting in filling out the application. The application contained question 7, reading as follows: "What is the condition of your health? A. Good."

(Testimony of Frances Hill)

At this stage of the trial the following proceedings took place:

BY MR. FOOKS:

Q. Did you mean that at that time?

A. I wouldn't have been accepted if I hadn't signed that way. Certainly I didn't mean it.

(Reading)

"Q. Have you any physical defects?

"A. No.

"Q. What communicable diseases have you had?

"A. Measles, whooping cough, mumps.

"Q. Have you any tendency to constitutional or pulmonary trouble?

"A. No.

"Q. From what school of nursing are you a graduate?

"A. St. Vincent's Infirmary, Little Rock, Arkansas."

That is correct, is it not? A. Yes.

"Q. Length of course when you graduated?

"A. Two years, six months.

"Q. Date you finished?

"A. April 1, 1915.

"Q. Character of hospital?

"A. General—general.

"Q. Daily average number of patients in hospital during training?

"A. 250.

"Q. Are you a registered nurse?

"A. Yes.

"Q. In what states?

"A. Arkansas, Arizona, Reg. No. 493.

(Testimony of Frances Hill)

“Q. State how, where and for what period of time in each instance you have been employed since graduation?”

“A. Private duty.

“Q. Has the state in which you graduated registration for nurses?”

A. Yes.

“Q. Would you consider an institutional position, if so, state kind and what locality?”

“A. No.

“Q. Would you take all classes of cases?”

“A. No.

“Q. Have you any preference?”

“A. Yes.

“State those that you register against.

“A. O.B.”

(To Witness)

Q. What is “O.B.”?

A. Obstetrical nursing.

Q. “D.T.” What does that mean?

A. Delirium Tremens.

Q. “Mental” and then there is a dash “Barlow Brown.” Can you explain what that means?

A. I registered against night duty. I don't know what you are speaking of.

Well, it has the answer, subsection (b) of question 18, “Will you take all classes of cases? Have you any preference?”

“A. Yes.

“(b) State those that you register against—O. B., D. T., Mental, Barlow-Brown”.

(Testimony of Frances Hill)

“Q Do you understand that in signing this blank you accept the rules and regulations of the registry, the schedule of prices as given in the rules, and that you will give it your loyal support?”

“A Yes.

“Signature “Frances Hill
Date 10-5-29”.

MR. FOOKS:

So, your answer is that you filled this out?

THE WITNESS: Yes, I filled this out.

Q And in answer to the question, “Have you any tendencies to constitutional or pulmonary trouble”, which you answered “No”, or “Have you any physical defects”, you filled that out that way in order that you could get work?

A I wouldn't have been accepted if I hadn't have filled it out in that way.

Q Well, that is kind of evading my question, because that is a conclusion on your part. I am asking you why you filled it out that way.

A Because I had to in order for my name to be accepted.

Q Now, I observe, Miss Hill, that you didn't list in your classifications the preference. You didn't list that you did not want tuberculosis cases, you made no exception in this case. You took tuberculosis cases, did you not?

A Yes.

(Witness resuming): I am acquainted with Miss Florence Scales. She was nurse also employed at St. Luke's

(Testimony of Frances Hill)

Hospital, St. Luke's Home, I believe it is properly called, at Phoenix. She was head nurse there. She used to call me from time to time, not always through the directory, sometimes she called me direct. I did no private duty in Phoenix during 1923. She was head nurse at that time. In the fall of 19—the summer of 1923, was when I broke down under Dr. Wheeler, and I went away from Phoenix for a little while and rested—and then the next duty was in Hayden, Arizona, this mining hospital. That was the latter part of 1923. I was not called in the early part of 1923 by Miss Scales to take patients at St. Luke's Home prior to the time my health broke down—I was with Dr. Wheeler all that time. I wasn't on call for private cases. I was working with Dr. Wheeler from the first of 1923 until the latter part of July, then after that Dr. Wheeler advised me I should leave and then I rested until October. After October I went to Hayden. In 1924 I went to work in the Indian School, during the fall of 1924, and I still had done no private duty. I might have been off a one day case at St. Luke's some time during that time. A man that knew me—I'll take that back. That was a mistake—I might have had a one day case during 1924. A man that knew me—I relieved another nurse for one day I believe, but I wasn't registered for private duty during 1924.

If the evidence should show from Miss Scales deposition that from 1923 to 1930 she estimated that I worked about one-half of the time, that is a misunderstanding. You see, Miss Scales was head nurse from 1923 up until 1930, but you understand, St. Luke's Home was only in Phoenix half of the time. They moved to the Mountains for half of the year and they are in Phoenix during the

(Testimony of Frances Hill)

winter months only. Miss Scales went to the mountains each time. She was head nurse during that period of time at St. Luke's, from 1923 to 1930. The last time I heard from her she was head nurse in tuberculosis sanitarium at Morris Plains, New Jersey.

I was working in the Indian Sanitarium in 1923. I quit that job in July 1923. I didn't take that job at the Indian school until the fall of 1924. I was not working at any government job between July 1923 and fall of 1924. During that time Miss Scales was head nurse at St. Luke's Home in Phoenix.

I am acquainted with Miss Bernice Ready. I met Miss Ready in El Paso. I had an apartment with her for about three or four months. Miss Bertha Case was in charge of the Nurses' Registry from 1924 to 1929. I was registered for private duty nursing the latter part of 1925. Prior to that time I had been on the registry going from these different jobs. There were two jobs that were government institutions. The Indian Sanitarium—I wasn't in Civil Service and I was only temporary there. In the Indian School I was under Civil Service. The other institutions with which I was connected were private mining institutions. Miss Case placed me on some of those institutional jobs. She put me on the first government job. That was temporary. She didn't place me on the job at the Indian school but she did place me on the job at the Indian sanitarium. Dr. Malloy treated me at different times, I don't remember when was the last time Dr. Malloy treated me or when I went to see him. It might have been 1931. One time Dr. Malloy treated me before I went to the Good Samaritan Hospital as a patient and one time

(Testimony of Frances Hill)

Dr. Brockway treated me. I believe Dr. Brockway is still in Phoenix. I believe I went to the Good Samaritan Hospital at Phoenix about May 1927. I was there about a week. I believe I was there at least a week. I went there for an operation for gall bladder and appendix operation. Dr. Paine Palmer was actually the surgeon and Dr. Brockway assisted in the operation. I wasn't awake, I wasn't conscious of that, but they were both to do the work. That was my understanding at the time. Dr. Palmer was called in. The two of them were to operate, it didn't make any difference which one. Dr. Malloy was not there at the time. He called in to see me—I recall his coming in to my room to see me, but he didn't treat me. He didn't have anything to do with the operation so far as I know. He didn't assist in administering the anaesthetic. As far as I know I did not have a general anaesthetic, I had gas and oxygen. I don't believe they followed that up with ether. I was to have gas, that was the agreement and that is what I paid for. After you are first out from under the gas you can easily tell from the taste in your mouth whether they had administered ether or not. They agreed to give me gas and 25 per cent oxygen.

The government then offered without objection the checks of the Magma Copper Company which were marked Government's Exhibits next in order for identification. That is a series of checks representing payments made to Miss Hill by the Magma Copper Company, or at the Magma Copper Company Hospital, by Dr. Swackhammer, M. D.. There are eleven of them in number and they cover a period from September 15, 1930, to March 3, 1931. They were marked as Government's Exhibit G for identification.

(Testimony of Frances Hill)

(Witness continuing): During the time I was in vocational training I was there for a period of approximately seven months I believe. That was with Dr. Cathcart. Dr. Mason was only in training the same as I was. I was paid a subsistence allowance of \$100 a month from the government while I was there, just for that seven months.

It was then stipulated by counsel that that was not salary, it was just training allowance to sustain her while she was in training . . . vocational training.

(Witness continuing): When I first came to Los Angeles I brought a patient. I don't know if he went to see Dr. Cohn or not. I didn't come here (Los Angeles), especially to be examined by Dr. Cohn, but I heard so much about him, and I was here, and I was taken ill while I was here, and I was examined by Dr. Cohn. At the time I was first examined by Dr. Cohn he advised me to go back to Arizona at that time. I didn't come to Los Angeles to stay at that time.

REDIRECT EXAMINATION.

When I had this gall bladder operation in 1926 I don't know that there was any difference—about the same, whether I felt better or worse after the operation, than I felt before—about the same. They advised me to have the gall bladder removed—it might help me. You see the trouble in my knee was pretty bad, very bad at that time. The condition in my knees did not clear up after the operation. It has never cleared up. In fact, it is pretty bad during the rainy season. It was very bad. This operation never had much effect on me one way or the other.

(Testimony of Frances Hill)

RECROSS EXAMINATION.

Regarding this operation, removing my gall bladder,—well, it was my general condition. They advised me to have gall bladder removed. Of course I had always had those vomiting spells and indigestion since I had influenza and pneumonia when I was overseas. I had the trouble with my knee at that time, it was very bad. It has been bad at different times, a little better some times, but at different times it has been very bad. It was very bad when I was in Superior. In fact, it was rather difficult for me to go up two steps of the nurses' home at the hospital at that time. Dr. Swackhammer treated me. I have had both my knees X-rayed a number of times since 1918. When I went to the Good Samaritan Hospital it was my intention that they operate and remove my gall bladder and appendix for any trouble I was having in my knees. I had severe stomach trouble, and I still have it. I was not having colitis at that time. I have never had colitis. I had disturbances in my stomach at that time. In my experience as a nurse I have had a gall bladder case and an appendectomy, where they both were removed at the same time. It isn't for me to say what is the customary time that the patient recovers sufficiently to leave the hospital after such an operation—because that is under the doctor's advice always. I have known them to go home a week later on stretchers. I went home in five days on stretchers. I was there a week after the operation. I was there overnight. It would be a week after the operation. I was operated at seven o'clock in the morning, Monday morning, and the next Sunday night after dinner I went home on stretchers, and took my nurse, Miss Todhunter, with me.

(Testimony of Frances Hill)

REDIRECT EXAMINATION.

About this stomach trouble and disturbance of my gastro-intestinal tract, I first had trouble with that on the way home from overseas. After I got out and was discharged it has always bothered me; bothered with indigestion, vomiting spells. Concerning whether it increased or decreased after the gall bladder operation—oh, I don't notice any difference.

At this stage of the trial Plaintiff's Counsel read from Government's Exhibit E for identification, said document being a certified copy of the records of the Adjutant General's Office, War Department, Washington, D. C., pertaining to service and medical records of the plaintiff while in the United States Army and reads as follows:

"I certify that the records on file in the Adjutant General's Office show that Frances Hill executed oath of office as nurse, Army Nurse Corps, March 28, 1918; reported for duty at General Hospital #9, Lakewood, New Jersey, March 30, 1918; transferred April 17, 1918 to Holley Hotel, New York, and assigned to duty with Hospital Unit 'T'; left the United States May 11, 1918, for service overseas; arrived in London, England, May 28, 1918; served with Hospital Unit 'T' at Hursley Park Hospital, England, and at Sarisbury Court, Hants, London, England, to July 18, 1918; transferred in July 1918 to duty with American Red Cross Military Hospital #4, Liverpool, England; left that hospital December 11, 1918, enroute to the United States; arrived in the United States December 26, 1918; reported for duty at Embarkation Hospital #4, New York, December 26, 1918; was forwarded to Nurses' Demobilization Station, Hotel Albert, New York

(Testimony of Frances Hill)

City; was granted leave of absence for 18 days beginning January 17, 1919, and was relieved from active duty upon the expiration of that leave, February 3, 1919, when her service was honorably terminated.

"I further certify that the records show that the above named nurse was treated from April 25 to 27, 1918, at the Office of the Attending Surgeon, Port of Embarkation, Hoboken, New Jersey, for Hyperchlorhydria, in line of duty; November 1 to 12, 1918, at American Red Cross Military Hospital #4, Liverpool, England, for bronchitis, acute, and that she was reported sick in quarters from October 2 to 10, 1918, with influenza, and acute bronchitis. Nothing has been found of record to show that she was given medical treatment or reported absent from duty, other than as set forth herein, during the period of her military service.

"(Signed) E. T. Conley,
"Brigadier General, U. S. Army."

Plaintiff's Counsel read Government Exhibit A for identification which is a certified photostat of the service and medical records of the Adjutant General's Office, War Department, pertaining to the service and medical records of plaintiff and reads as follows:

"Report of physical examination of enlisted man prior to separation from service in United States Army,

"(Surname) Hill (Christian name) Frances

"(Grade) Reserve Nurse, Army Nurse Corps.

"Declaration of Nurse

(Testimony of Frances Hill)

“Q Have you any reason to believe that at the present time you are suffering from the effects of any wound, injury, or disease, or that you have any disability or impairment of, whether or not incurred in the military service?

“A Yes.

“Q If so, describe the disability, stating the nature and location of the wound, injury or disease.

“A Pain in left lung following bronchial pneumonia.

“Q When was the disability incurred?

“A October 1st, 1918.

“Q Where was the disability incurred?

“A A. R. C. Mil. Hos. #4, Liverpool, England.

“I declare that the foregoing questions and my answers thereto have been read over to me and that I fully understand the questions and my replies to them are true in every respect and are correctly recorded.

“(Signed) Frances Hill.

“Reserve Nurse”.

It is signed by Frederick M. Hawks, Army Nurse Corps.

“Place Hotel Albert.

“Date Jan. 13, 1919.”

On the following page, which appears to be marked page (2),

“Certificate of Immediate Commanding Officer.”

“I certify that:

“Aside from her own statement I do not know, nor have I any reason to believe, that the nurse who made

(Testimony of Frances Hill)

and signed the foregoing declaration has a wound, injury, or disease at the present time, whether or not incurred in the military service of the United States.

“The nurse who made and signed the foregoing declaration says she has a pain in left lung, which was incurred about October 1, 1918, at the Military Hospital #4, Liverpool, England.

“The nature and location of the disease are unknown except as stated by the nurse,” and it is signed by “A. T. Green, Major, Army Medical Office, January 13, 1919.”

On the following page, which appears to be marked page (3), is a

“Certificate of Examining Surgeon”.

“I certify that:

“The nurse above has this date been given a careful physical examination, and it is found that

“She is physically and mentally sound.

“The wound, injury, or disease—”. That has been stricken out from that sentence.

“In view of occupation, she is no percent disabled.”

“(Signed) Wm. A. Clark,

“Major, M. C., U. S. Army.”

On the following page is a statement, which appears to be on page (1-A), and states at the top

“(1) Surname . . . Hill, (2) Christian name
. . . Frances

(Testimony of Frances Hill)

“(3) Rank, Nurse: (4) Company, Hosp.; (5) Regiment or Staff Corps, Unit ‘T’. ANC.: (6) Age, years 26; (7) Race, w. (8) Nativity, Arkansas (9) Service, yrs., 6/12

“(10) Register No.

“(11) Date of admission, Nov. 1st, 1918.

“(12) Source of admission, Command.

“(13) Cause of admission, Bronchitis acute, Hospital.

“(14) In line of duty? Yes.

“(15) Complication, seq., etc.

“(16) Disposition, Duty.

“(17) Date of disposition, Nov. 12th, 1918.

“(18) Name of hospital, etc., American Red Cross Military Hospital No. 4, Liverpool.

“(19) Sent with report of S. & W. for month of

“(Signed) G. M. Lochner, Captain,
“M. C., U. S. Army.”

On the last page of this exhibit is

“Space above this line to be left blank,”

And then:

“(26) Days of treatment in current case, current year,” and it states the year is 1918. In the column “In hospital”, it shows the various months down to the month of November, and it states the month is November. In the column “In hospital”, opposite “November”, it shows the total number of days in the hospital as “11”.

(Testimony of Dr. Julian M. Wolfsohn)

DR. JULIAN M. WOLFSOHN,

called as a witness on behalf of the plaintiff, having been first duly sworn, testified under oath by deposition as follows:

My full name is Dr. Julian Mast Wolfsohn. I am a licensed physician and surgeon, licensed to practice in this state. I graduated from Johns Hopkins School of Medicine and since my graduation from that school I have practiced continuously. My occupation at the present time is consultant in the diagnosis of general diseases, with special reference to nervous and mental diseases. I was in the United States Army during the World War with the rank of Major. During the time I was first in the army I had occasion to make the acquaintance of Miss Frances Hill, the plaintiff in this case. I met her in Liverpool, England. I was chief of the Medical Service and Commanding Officer of the Red Cross Hospital No. 4 at Liverpool, England, and she was one of my nurses. Of my own knowledge I remember that—in about October, 1918, she was taken sick and I took care of her at that time. She was sick about eleven days with the so-called influenza and had bronchial pneumonia at that time. She was in her quarters for about eleven days. She was not in the hospital the first time. I permitted her to leave her quarters and shortly after she was taken quite sick again with the same thing and I sent her to the hospital where she was under my care and she was in the hospital about two weeks with bronchial pneumonia and this so-called influenza. That was the so-called Spanish influenza that was epidemic at that time. "Epidemic" means generally prevalent disease, one that was common at that time.

(Testimony of Dr. Julian M. Wolfsohn)

I recall Miss Hill personally very well. Prior to the time she got sick, like all the nurses she was working and I didn't pay much attention to any of them, just talked to them—she was working all right. She was a very good nurse. There was nothing at all abnormal or unusual about her that I noticed. The conditions under which the nurses were working in October, 1918, just prior to Miss Hill's coming down with the influenza—we had the hospital full of these patients and we were all working over time. I myself worked thirty-six hours without a stop. The influenza epidemic occasioned this. That was true of all the nurses in the hospital. They all worked over time. I didn't see her after her discharge from the hospital. The next time I saw her after that was May 16, 1935, in my office. I examined her at that time. At that time when I examined her I took the history of the interim first. I recalled her at that time. She was a very personable young woman and I remembered her. I took this history of the interim from the time she left the hospital until the time she came to my office. Then I made a mental and physical examination also. I found that the important things were that in her chest, the upper left part of her chest, especially below and over the percussion note was high pitched as compared with the right and that the breath sounds were rather harshened. I also found that the heart was somewhat dilated, the point of maximum impulse was outside of the nipple line with the patient sitting up and systolic murmurs were heard at the apex.

(Testimony of Dr. Julian M. Wolfsohn)

Also her blood pressure was 158 over 96, which is a marked increase. Her pulse rate was rather fast, 82. There was some vasomotor disturbances noted and she had particularly cold hands which were not moist. That is, I should think, the main body of the findings. As a result of that examination my diagnosis was—that she had a chronic pulmonary condition which was the result of the infection which I had treated before, in 1918. Concerning any connection between the condition found from the examination in 1935, and the condition found from the infection in 1918, the brochial trouble in 1918 was in the same part of the chest and the history of the interim gave definite connection between the two. I am familiar with the duties of nurses. Basing my opinion on the condition found in 1935, and concerning the effect upon Miss Hill's health on her following her vocation as a nurse, as to whether or not it would be injurious to her health, I would say that in so far as the breath sounds were harshened and roughened in this area and high pitched percussion notes were noted over this particular area, I believe the local condition not completely healed and any physical labor she might do would be injurious to her health. Concerning her heart condition in that respect, I would not want to pass my opinion. I know there are murmurs there and the heart is dilated, but I couldn't speak as an expert, but generally speaking I would say that it would not do her any good.

(Testimony of Dr. Julian M. Wolfsohn)

CROSS EXAMINATION.

I first treated this girl in 1918 for what was known as Spanish influenza, and bronchial pneumonia. I treated her twice. She had a relapse. I only treated her for the influenza, and bronchial pneumonia at that time. We had over 500 cases in the hospital at the time and I did not go into the matter deeply at that time. Apart from any histories I may have I have no knowledge as to how long her heart condition had existed—only from what I found. The first time any heart disability was found was in 1935—any abnormality, yes. But it is very common as a sequence to bronchial pneumonia and Spanish influenza, to have myocraditis and cardiac conditions resulting therefrom. It is not possible this condition might follow a thyroidectomy. A thyroidectomy is usually done for the relief of this condition rather than to cause it. I noticed in examining Miss Hill that she did have a slight scar on her throat but I believe that was for the relief of her heart condition. At the present time I would not want to venture any medical opinion as to her exact heart condition—except that she had heart murmurs and she has a dilated heart and while it is my belief that her heart is diseased I would not care definitely to venture an opinion. However I definitely believe that it is diseased. I merely cannot say as an expert. I do not know of my own knowledge how long the condition has existed as it is today except from the history and from the fact that I treated her in 1918 and that these cardiac conditions very

(Testimony of Dr. Julian M. Wolfsohn)

often result from Spanish influenza and bronchial pneumonia. Concerning her present bronchial condition—she has a chronic inflammatory condition affecting principally the upper part of her left lung. As to how I would describe this condition in relation to any particular disease, not having made bacteriological examination, I could not say just exactly, not having made any X-ray I couldn't tell exactly how bad or how much or in what way. I could only tell the general pathological condition. I didn't make any sputum tests. I didn't make any X-ray plates. I didn't find any pathological sounds in the right lung, that I could hear. Concerning treatment recommended for the condition of the left lung, we usually treat this condition by more or less complete rest without undue exercise until such time as it completely arrested and then the patient usually does work according to what he or she can do. The treatment I would recommend for Miss Hill would be to take outdoor life, free from physical and mental worries. I do not believe improvement is possible in her present condition after all these years. These pulmonary condition such as this woman has are usually associated with pleurisy—is or has been present, which also accounts for the high pitched percussion notes in the sounds. I didn't examine her lungs through a fluoroscope, just a physical examination. The principal disability I found is confined to the upper part of her left lung. Of course, by the use of X-ray further findings might be made. X-ray is used purely to substantiate the physical examination findings. Medical men do not use X-rays to diagnose cases, but use their hands and ears mostly, and the X-ray to confirm their findings.

(Testimony of Mary Sands Thompson)

REDIRECT EXAMINATION.

My specialty at the present time is diagnosis of general diseases with special reference to nervous and mental diseases. At the present time I am Clinical Professor of the Medical School at Stanford University, Division Medicine—Neuropsychiatry. I am Clinical Professor of that department. Since leaving medical school I have had the following post-graduate work; I spend about four months in Europe each year studying at the medical centers in London, Paris, Berlin, etc.. I have been doing this since 1917. In connection with my post-graduate work I have attended the following universities and schools of medicine: The London University, the National Hospital for Paralytic, etc. in London, the Sal Petriere in Paris, and the Petie, Paris, and the University of Montpellier, France.

MARY SANDS THOMPSON,

called as a witness for plaintiff, having been first duly sworn testified under oath by deposition as follows:

I live at 105 West 24th Street, Little Rock, Arkansas. I have been a resident of Little Rock since 1906. I am acquainted with Frances Hill. I became acquainted with her before we went to war, perhaps two months. We were organized here and knew we were going into the same unit together. We met at that time. At the time when we were organized in this unit of nurses at Little Rock, this unit was organized by Dr. Snodgrass of Little Rock. I observed Miss Hill before, during and after her military service. We were required to take a physical examination

(Testimony of Mary Sands Thompson)

upon being formed into a nurse's unit. We were through the Red Cross and were inducted into the military service as a unit. Upon being inducted into the service the nurses were given a very thorough examination. The purpose of it was that all the nurses that did not meet the examination were rejected. I observed the physical condition of Miss Hill at that time. I had the impression that she was a healthy looking person, very healthy and normal looking. She was almost over-plump, had good color, eyes bright and seemed alert. I served overseas with her. We went to Liverpool in July, 1918 and had our first duty there. Prior to that time we were waiting for an assignment. While in Liverpool Miss Hill had the flu, as most of the nurses did have at that time. I was sick myself. I was in London at the nurses' resting home and some of the nurses on account of not having a place for them, were confined to their rooms. That may have been her case. I had occasion to observe her perform her duties prior to leaving England. About October we had that flu epidemic and we didn't leave until about the middle of December. I recall seeing Miss Hill on duty and she complained of feeling bad and she didn't look as if she felt up to par. We left England together I think December 11, 1918. I saw Miss Hill aboard the ship while crossing the ocean. I don't remember very much about her on the way home. We landed at Hoboken, New York, December 26th. I don't believe Miss Hill had to have any special medical attention or anything, she got off just like the rest of us. I don't think she was sent to a hospital because of illness. I don't believe she developed any illness while she remained at that place. I was with her when we left New York, about January 14th. Miss Hill developed an illness

(Testimony of Mary Sands Thompson)

on this journey. We got on the train at night, and the next morning I found Miss Hill still in her berth. I stopped to inquire and found that she was really sick and since there wasn't anyone else doing anything for her I took it upon myself to look after her. I stayed with her the entire trip down—the entire trip she was lying down until we got to Memphis. Her complaints—she had a cough and a pain in her chest and a fever. She was short of breath and in fact she was just a very sick girl. Her color was sallow, deep circles under her eyes, her lips were blue. She wasn't the normal healthy woman she was when she went into the service. She had suffered decidedly from loss of weight. I might add that at Memphis I was impressed that she was so sick that she wasn't able to wait around the station like the rest of us. I knew she wasn't able to sit around and wait for the train so I had the ticket agent transfer her ticket to another train leaving right away. I got a colored boy to help us over to the train. She walked. I helped her get her ticket transferred in order to get her home as soon as possible. We were still in the military service then. I was discharged I believe February 2, 1919. All the nurses had some leave coming to us and we were mustered out of service at the expiration of our leave date. I believe she was discharged about the same time I was. We went in at the same time and got out at the same time. I observed her after that—some two or three weeks later I met her on the street, which was the first time I saw her after we came home. I had inquired as to her condition several times over the telephone but that was the first time I had seen her. She looked as she had before. She had very bad color and

(Testimony of Mary Sands Thompson)

her lips were blue. She had just come from the doctor's office. I was impressed by the seriousness of her condition. There was decided loss of weight. She still had the cough and was raising some mucous or sputum. I went in training in 1906 and graduated in 1909. I have served as nurse almost continuously until 1931. I have attended and have observed tubercular patients. From my observation of Miss Hill just before her discharge from the military service *service* she rather looked as if she was much below par. She moved, acted and walked as if she were tired. I believe I observed that she continually cleared her throat. She had a cough. During the trip home she complained of pain all through her chest and of soreness. She was feverish. She was eating very light. I can't say she seemed to have an upset stomach. She had no appetite. I can't say she appeared nervous or irritable. She was sick—too sick to care much about anything.

CROSS EXAMINATION

The last time I saw her was about three or four weeks after we got home, in 1919. I have not seen her or known about her condition since. I do not know whether she ever has recovered or not. About her illness in the service—I can't recall how sick or anything about her condition because I was sick and wasn't on active duty but being in the hospital I would say she evidently did have some medical attention. On the trip home from New York to Little Rock, I don't recall that she had any medicine at all. I spoke of her being feverish. I didn't really take her temperature—she was hot, flushed and perspired and had all the symptoms of having fever.

(Testimony of Mary Louise Black)

MARY LOUISE BLACK,

called as a witness for plaintiff, having been first duly sworn, testified under oath by deposition as follows:

I am Mrs. M. C. Black, that is my husband's name. Frances Hill is my sister. She is my older sister. Right now I am just keeping house. I am a graduate nurse—that is my profession. I live at 911 S. Main St., Tulsa, Oklahoma. Prior to entering the military service my sister was in Little Rock, Arkansas. She was a nurse also. I was in training at that time. Prior to my sister going into the military service we were living in Little Rock, Arkansas. When my sister went into the military service as an army nurse I was in training for a nurse at that time. Both my sister and I lived in Little Rock prior to her entry into the service. We had been there every day for a year and a half, approximately; and I had been there off and on since she entered training; the two of us had lived there for some year and a half prior to the time she went into the service. Our home was not in Little Rock, it was out in the country. She entered the nurse training prior to the time I did and was a graduate when I entered. She went into the service, to the best I remember, in 1917; in the fall, I think, of 1917. She left Little Rock with Unit T when she entered the service. At that time she seemed to be in perfect health—just full of life and energy. She worked regularly and was athletically inclined. She liked all sorts of sports—dancing, swimming and hiking. She was able to do those things without any trouble prior to her entry into the service—they didn't tire her a bit, she could walk and walk. After my sister left Little

(Testimony of Mary Louise Black)

Rock—when she left with Unit T, I didn't see her until she was discharged—until she came back to Little Rock, about the middle of January, 1919. On her return we lived in the same house; we had a room together. I met her at the train and brought her right out to the house. She was in very poor health when she returned. With reference to her health and physical condition when she returned I observed she was very nervous and irritable and her skin was blue and her lips were blue and she coughed quite a bit and she complained of a pain under her left shoulder and also a pain in her chest, and she ran a temperature—99 to 100 and a little over, and she had pains in her knees—rheumatic pains in her knees, and she was short winded. She couldn't walk a block without having to stop and rest—just gasped for breath. When she returned I put her to bed and then we went down to see Dr. McGill and Dr. Kirby and they examined her. They treated her—they gave her some medicine to relieve her; it was a prescription, I don't know what it was but they gave her some medicine to relieve her. Dr. Kirby treated her all the time she was in Little Rock because she would take cold so easily and she pretty nearly always had a cold, and he treated her for those pains in her shoulder and her knees. She remained in Little Rock around nine months; I don't remember just exactly how long but around that time. During that period she worked just a little bit; she would try to work, but she couldn't because she would give out and she was just so tired and weak.

She was a nurse and the doctors at St. Luke's Hospital favored her with good cases because they knew she needed to work, and she couldn't stand the hard ones; but she

(Testimony of Mary Louise Black)

couldn't hold out any time. Public nursing was rather plentiful in Little Rock during that period; there was plenty of work. She wasn't able to do the work when she got a job and she wouldn't hold out very many hours; she had to have relief. I have relieved her on those jobs and I have also gone out to the hospital around meal time when she would be working to carry trays up and down steps to her patient because she couldn't go up and down steps. I did that frequently. If I—I usually was in the hospital with her when she was working on a case; and if I wasn't, well, I would make it a point to go out there because—when she had to go up and down stairs, it would just—she would have to go to bed. Others helped her and assisted her in carrying on her work, there were two or three of her nurse friends that would do that when they were on duty. Miss Clellan Mason was a nurse, and Miss Georgia Lyle helped her. One particular case of typhoid she had to quit; she had been on it part of two days with Mr. Lee Cazort's wife; she was sick in St. Luke's Hospital with typhoid; she had to give that up, because she couldn't stand it; Dr. Kirby sent her home. Her temperature came up. I know of several cases where she had to get relief and leave the case. I relieved her a couple of times myself. I know she failed Dr. Kirby several times to go on cases by reason of her own condition. That was for some six or nine months after she got back in January. When she came home from the Army she came home in a berth. She was not traveling as a normal person would travel. She had a nurse with her, Miss Mary Sands. She was really brought home in bed. Miss Sands brought her all the way from New York. I met her and she was taken from the train to my home, or my room, in

(Testimony of Mary Louise Black)

a car. When she was off duty at my room she stayed in bed most of the time. She would get up and dress and go through the house—we ate—we boarded—we had sleeping rooms, and she would go out to the dining room for her meals. She did that all the time we were there. Most of her time she spent in bed. I took her temperature on occasions during that period. I was a graduate nurse when she returned. I took her temperature—well, I couldn't say for sure but several times a week. I would take it when I got in. On those occasions I found her temperature from 99 to 100.6. She had a fever most of the time. Regarding her mental condition when she returned home, she was just real nervous and irritable; not like herself. She was very much depressed. Comparing her mental condition at the time she left for the Army with when she returned—well, right opposite, because when she left she was always jolly and liked to go out with people and have a good time, and when she came back she just didn't care whether she saw anybody or not. As to her breathing, I noticed that she was short-winded. She couldn't go up or down stairs without gasping for breath, and she couldn't walk a block without gasping for breath. That condition prevailed at the time she came home, and continued all the time she was there—along at the last part it wasn't quite so bad, but it wasn't much better. She didn't have much appetite. That compared with the appetite she had before she went into the service—well, when she went in she had a good appetite—liked everything. I haven't seen my sister since 1930. The occasion of her leaving Little Rock was that Dr. Kirby thought if she would change climates she might feel better. He thought that she needed a higher altitude for

(Testimony of Mary Louise Black)

her health. He told her to go to El Paso first, and then if she didn't get along all right to go on to New Mexico. She went to El Paso and stayed awhile, then she went on to Tucson. She was in a Government Hospital in New Mexico, I forget the name of it, for quite a while. Then went back to Tucson and then went on to Arizona. I don't know the exact periods of time she stayed at these various places. I have seen her once a year up until 1930. We would always go out to my mother's. The occasions of these visits—well, we just—my brother and I would send her money to come on each spring and summer to see our mother because she is old. We wanted her to come home. We did that up until 1930, up until the time my brother died. My sister was not able to work regularly as a nurse when she returned from the army. I saw her practically every year until 1930. I noticed her condition on those occasions. She was still—her lips were still blue and she still had, up until 1930, a bluish look, and she still coughed a little bit, and she still had the pain under her shoulder blade. Concerning any material recovery of her physical health on any of these occasions so far as I have observed in some ways she could stay up longer, she didn't regain her health or had not regained her health in 1930. The last time I saw her she was home—she stayed in bed pretty nearly a month. She took cold coming out there. That was 1930. She frequently did that. She was in Little Rock after the war and at various times I have seen her. She had a cold pretty near every time she would get home. She was substantially without energy when she got back—no pep at all. She became tired easily. The least little thing would tire her, and that was the general condition rather than the special.

(Testimony of Mary Louise Black)

These colds I spoke of, they weren't just ordinary little colds, they would just hold on. They just seemed like regular old colds. Her cough would always get worse and she would get a fresh cold. I noticed her clearing her throat quite a bit. It was usually when she had a cold. She was going it quite often when she would have a cold. I noticed her voice and the difference between what it was before she went into the service—when she would get real tired, why sometimes she would not speak above a whisper, and her voice was never strong like before she went into the service. She complained of pain in her back, in her left shoulder and one in her chest and trouble with her knees—rheumatic pains in her knees quite badly. That isn't what you would call a pleurisy pain. A pleurisy pain is more down in the side. She had pleurisy quite often but this was in the shoulder blade. It is not exactly a pleurisy pain because it is there constantly, and pleurisy just comes and goes. She would complain of pleurisy pains, she had pleurisy. After she came back the least little cold she would have pleurisy. That was true when she first came back from the army. On several occasions I have strapped her side up with adhesive tape to stop the pain. She complained of such pains at other times when I saw her after she went down to El Paso.

When she was back after that, 1921, we went out to my mother's and I had to tape her up. That is the only time I ever taped her up, but I have heard—she has complained of the pleurisy pains. I took her temperature after she went down to El Paso, when she was back home, sick in bed. She ran around 100 several days. I did not take her temperature on any other occasion. That was along about '21. There was a difference in her weight after

(Testimony of Mary Louise Black)

she returned from what it was at the time she went into the service. She had lost several pounds, though she wasn't skinny, but she had lost. After she returned home—she held about the same I think since about 1921. Her appetite after she came home, well it is a little better now, but it isn't as good as before she enlisted. The last time I saw her she was not quite as nervous and irritable.

CROSS EXAMINATION

The plaintiff is an older sister, she has never been married. She returned from the Army to Little Rock the middle of January, 1919. I don't know the exact date, but it was along about the middle of January. She landed in this country at New York and returned home in a Pullman, She came in a berth. Miss Mary Sands came with her all the way from New York. She wasn't exactly a friend but she was in Unit T with her. They were in the same division together in the Army. Miss Sands was going to Little Rock, she lived there. She came home with my sister—she had to take care of her. She took care of my sister. She nursed her from New York to Little Rock. My sister went to bed after she arrived home. I can't give you the exact time but some little time after she returned from the army she was in bed before she first started to work. It was several weeks. My mother is still living and my father is not living. I have other brothers and sisters living. She doesn't work; she hasn't worked in three or four years. I was just try-

(Testimony of Mary Louise Black)

ing to think how long it was since she was in San Fernando Hospital. She hasn't worked since she was in San Fernando Hospital. I haven't seen her since 1930. Prior to that time she was working in Superior I believe . . . nursing in a hospital. As long as she worked in the hospital there, she was making her living there in Superior working in the hospital. She didn't work very long there. I don't know just exactly how long she worked but I know she had to go to Phoenix and go to bed for about a month. The doctor in the hospital sent her home. She just wrote me and told me that.

After she arrived in Little Rock—I don't know just exactly but it was several weeks—she tried to work because I had to pay all the expenses and it was—she didn't like that. After she started to work she couldn't work continuously. I wouldn't say how many days a week she worked because when—she would get lots of calls but she couldn't hold the case for only maybe a day or a day and a half, something like that; she would have to have relief. I have helped her on such occasions. She received the compensation for the work. You see how it was, the doctors gave her the lightest cases because she had nursed for Dr. Kirby before she went in the army and he knew what a hard time it was for her to work anyway, and he would give her as easy a case as he could—make it as

(Testimony of Mary Louise Black)

light on her as possible so she could carry on. She had Dr. Kirby—H. H. Kirby and Dr. McGill both of Little Rock when she returned—from the army. Her ailment—when I went with her to Dr. McGill, he made an X-ray, and he said she had an enlarged aorta and a heart murmur, and he said that it was tuberculosis. He and Dr. Kirby examined her together, but Dr. Kirby being a surgeon had left it up to Dr. McGill about the X-rays because that is what he specializes in. When I first saw her in 1930 she had improved just a little bit; she wasn't quite as short winded; she could stay up more; but she was still nervous. She hadn't lost much weight, she was holding her own—pretty good in the weight line then. Her age now, I think she is 46; but I wouldn't say positively because I have forgotten. I think 1930 she was 41 years old. The plaintiff lived with me when she returned from the Army. I do not know with whom she has lived since she left Arkansas.

REDIRECT EXAMINATION

All I know about my sister after she left Little Rock except on her return visits, just when she would come back, is what she wrote me and what she told me. I never saw her either in Texas or Arizona or California or any of those places.

(Testimony of Dr. Albert G. McGill)

DR. ALBERT G. MCGILL

called as a witness on behalf of plaintiff, having been first duly sworn, testified under oath by deposition, as follows:

My name is Dr. Albert G. McGill, age 55, physician and surgeon, Little Rock Arkansas. I have practiced in this state 32 years. I graduated from Tulane Medical School, New Orleans, Louisiana in 1906. My specialty is X-ray and laboratory diagnosis and I do some general practice. I am acquainted with the plaintiff Miss Frances Hill. I have known her since the war and before. I knew her at St. Luke's Hospital where she was one of our nurses. Before the war she worked in St. Luke's Hospital as a nurse while I was working with that institution, two or three years. I observed her physical condition as I worked at the same hospital. She was a graduate nurse. Her physical condition when I knew her at that time was good. She was in good health, she was affable, agreeable and efficient as a nurse during that time. She was a successful nurse. I saw her after she returned from the war about January or February, 1919, On that occasion she came back to the hospital and consulted one of our staff members, Dr. Kirby, for the purpose of diagnosis and treatment. I had occasion to examine her at that time. We made a physical examination and the findings were rales of upper lobes of the lungs, a large heart with mitral regurgitation, otherwise known as mitral insufficiency which to an average man is a large and leaky heart. The examination revealed tubercle bacilli, a positive tubercle bacilli existed. We frequently examined hearts. A condition known as paranchynal, mottling and annular shadows—that's X-ray, and it means that there are spots on the lungs silisolid, and annular means produced by tu-

(Testimony of Dr. Albert G. McGill)

berculosis. Such a condition existed in her case. I made the examination of her chest. I found—that's what we were talking about—that was a chest examination. Her pulse was rapid, she had evening temperature, evening fever, fast pulse, low blood pressure. She had a cough. She had a lack of physical endurance. I made a laboratory examination of her sputum—it was a microscopic examination. It revealed tuberculosis. The presence of tubercular bacilli in the sputum is one of the best signs of active tuberculosis. I would call that active tuberculosis—pulmonary. I did not make any other findings at that time. I don't recall what her blood pressure was at that time. It was low, it has always been low. My diagnosis then, in 1919, of her condition, was pulmonary tuberculosis, active, myocarditis, and mitral regurgitation. My prognosis at that time was bad.

At this stage of the trial the following proceedings took place:

BY MR. GERLACK:

Q. From your finding as to the condition of her heart would you say that it was of permanent or temporary character?

A. Permanent.

MR. FOOKS: If the Court please, I think that invades the province of the jury and I object to the question and move the answer be stricken and the jury instructed to disregard it.

MR. GERLACK: It can not be invading the province of the jury. It is a question as to whether her condition was temporary or permanent.

(Testimony of Dr. Albert G. McGill)

THE COURT: Let me see the deposition.

(The deposition referred to was passed to the Court.)

THE COURT: The question does not ask the doctor as to the matter of disability or as to the matter of capacity to work, but rather whether the heart condition, about which a doctor may be expected to express an opinion, was temporary or otherwise.

MR. FOOKS: I think if the Court please, later on in the deposition of this doctor, you will find that he expresses the opinion that rest and no activity whatsoever were necessary in this case in her condition at that time, and that you will find through that deposition he expresses the opinion that she never could have worked, and her condition was no different in 1936 than it was in 1919 and '21 and '36. I submit, if Your Honor please, it is the ultimate fact to be found here by this jury. It is the issue in the case and it is simply doing something indirectly which the law says you cannot do directly.

THE COURT: Of course it is for this jury to decide the ultimate question, whether this plaintiff became totally and permanently disabled at or before midnight of August 31, 1919. That ultimate question, however, is to be answered upon all the evidence in the case, including opinion evidence to the extent that the jury accepts it, and such opinion evidence I think would include an answer to such a question as to the nature of the heart condition. I think it is a natural question that a doctor might be asked.

In other words, firstly, what is the condition that you find present and next, are the physical findings such as to disclose a temporary defect, or is it the kind of a defect which, in the light of medical experience, lends itself to improvement and elimination?

(Testimony of Dr. Albert G. McGill)

I think that is about all the doctor has done in answering the question.

MR. FOOKS: Of course, if I may interrupt, your Honor, and make another statement; Here is a doctor who is expressing a conclusion without all of the evidence in the case, a conclusion that this condition has been permanent ever since 1919, expressing it in 1936. Furthermore, to my way of thinking, if he would be asked this question as a medical man, is the condition of that kind usually curable or incurable, I think that would be possibly the way that the question should be framed, and then he, as a medical man, is presumed to know, or at least to be able to express an opinion as to whether a condition of that kind is usually expected to be curable or incurable. But when he comes out blankly with a conclusion of this kind, and says, "That is a permanent condition," without any further explanation, I think at most it cannot be regarded as anything but a conclusion, and I do not think the proper foundation has been laid to have the doctor even express such an opinion.

THE COURT: Oh, I think those criticisms go to the weight of his testimony. We might feel that it is not of much worth because of the lack of supporting data furnished by the doctor, but I think that is a matter that, of course, can be developed by cross examination. In the event, for example, the witness of this kind were in the court room. It is true, it is a broad, rather blanket, assertion, but, nevertheless, I think it comes within the boundaries of what a doctor might be asked.

The patient, for example, might come to him for examination, and he might tell the patient comparatively little for one reason or another, not going into details. One

(Testimony of Dr. Albert G. McGill)

of the questions the patient might ask him is, "Well, this myocarditis and mitral regurgitation that you speak of, is that of a temporary or permanent character?" I think the doctor might express his professional opinion in answer to that question. I think that is really all the import here.

MR. FOOKS: Note an exception.

(Witness continuing) From my finding as to the condition of her heart, I would say that it was of a permanent character. From my examination of her heart, it was damaged to such an extent that her condition would not improve and from which she would not ultimately recover. From my examination of her tubercular condition that existed and whether I would consider it permanent or temporary—well, the heart condition would be considered permanent, however she might get arrest of tuberculosis. I don't remember that I advised her as to her physical condition at that time. She wasn't my patient but I examined her for Dr. Kirby. Advice was probably left to him. However, she was one of our favorite nurses and her case was discussed at a meeting, or maybe more than a meeting, of our Hospital Staff and it was the opinion of all of us that she should go to a higher climate and that she shouldn't attempt to do anything. She was not able to do the work of a nurse at that time. The treatment that was prescribed for her—rest was considered the most important thing for the heart and the tuberculosis too; change of climate and diet for tubercular condition. I made a record of my examination that I made of her at that time. I have not that record now. I do not know where it is. I may have furnished the Veterans Administration with the record of that examination. I gave some of those records to somebody. I don't recall how long

(Testimony of Dr. Albert G. McGill)

Miss Hill was under my care at that time. She must have been around there several weeks. After she left the hospital she went West—it must have been El Paso. I don't recall when she left Little Rock. It was in the same year. I would say she went in the winter or early spring. I do not recall the exact date I examined her in Little Rock after her discharge from the Army—my impression is that it was just a few days. I recall testifying in this case once before. I stated in my former examination that I examined her about the first or second week in February of 1919. I think she attempted to do some nursing at the Hospital in Little Rock after she came back from the war and before going West and she couldn't do it. She was examined and found to be dangerous to have in a Hospital even if she could have worked. I don't think she tried to nurse anywhere else other than at the hospital, and her orders given were not to nurse after her condition was found out.

Then I examined her subsequent to 1919. That examination was made in 1921. She had been away and she returned back to Little Rock from El Paso. When she returned that time I examined her with X-ray and made the physical examination. I found—about what my findings were at the previous examination. Little or no change. I don't remember that I examined her sputum at that time, but I decided that she was still active and one of the ways of determining whether tuberculosis is active or not is the finding of tubercular bacilli in the sputum. I took an X-ray of her chest in 1921. The X-ray revealed about the same as at the first examination. I had occasion to examine Miss Hill subsequent to 1921. That was on January 6, 1936. After my examination of

(Testimony of Dr. Albert G. McGill)

Miss Hill in 1921 I advised further rest and her return to El Paso and further treatment out there for tuberculosis. I advised her to continue the treatment she had been having. She was not able to do any work at that time. In my practice I have had occasion to know the requirements of a job of nursing. She could not do that job in the manner satisfactory to a well qualified nurse. She was qualified by training to do nurse work as required by our hospital. She was not physically fit to do that character of nursing after her return from the war. When I examined her in 1936 I found on that examination—the lungs had moist rales of both upper lobes with consolidated area in both lungs. The heart was very large and there was a mitral regurgitation. She had a cough, evening rise of temperature, and a sputum containing tubercle bacilli. The pulse was rapid and the blood pressure was low, being 90/70. No improvement in lungs or heart since last examination. From my examination of her at that time I would say that her condition had not improved over her condition at the time I first examined her after her return from the Army. I examined her on three occasions. Her condition had not improved over the previous conditions at former examinations. Her condition from the examination made in 1936 had not advanced in severity from her condition in 1921—they were just about the same. There wasn't much difference. It was just about as severe. The trip out here caused her to have fever. Any exertion caused her to have fever. The mitral murmur was not more pronounced at the time of the last examination than before—but it has always been so pronounced that even a novice could hear it. I took an X-ray of Miss Hill in 1936. I do not have one of the X-rays

(Testimony of Dr. Albert G. McGill)

made at former examinations. Bearing in mind Miss Hills physical condition as I observed it at the time she went into the Army and my physical examination that I made of her after she came out of the service, in my opinion her tuberculosis began while she was in the Army. In my opinion at the time I saw her in February of 1919 her tuberculosis had existed at that time for a few months. From my association with Miss Hill prior to the time of her entry into the service, she did not complain of any heart disorder. From my examination of her condition after her return from military service, and of my knowledge of her condition before she entered into the service, I would say that her heart condition became serious while she was in the service. With her heart condition such as she suffered, she could not carry on physical activities and work as a nurse. If she tried to work with a condition like she had, the result would be fatal. She was advised by me that if she attempted to work as a nurse it would perhaps be fatal to her or result in the serious impairment of her health—her condition was explained to her so she would understand why it was necessary to take a rest for months and months, years and years, if necessary. She was acquainted with the danger of attempting to work. The effect contemplated work as a nurse or physical activity would have upon her heart condition if she had attempted it—it would make it worse.

Bearing in mind Miss Hill's physical condition and her condition upon my examinations of her, in my opinion the possibilities of Miss Hill being cured of her physical ail-

(Testimony of Dr. Albert G. McGill)

ments, if ever—the heart diseases were absolutely incurable and on account of these diseases it was very doubtful if the tuberculosis would ever be arrested. I don't think she could ever become cured of her tubercular condition—I didn't think it then and I don't think it now.

CROSS EXAMINATION

Miss Hill worked at St. Luke's Hospital for two or three years before she went into the Army. When she came back from the Army she came back to work at the hospital. I don't know the exact date she came back from the Army—it has been a long time. I have no records now to refresh my memory as to the date. She was discharged in January and I examined her in February. This plaintiff was not my patient at St. Luke's. I didn't handle the patients there, I just did the X-ray work, and microscopic work. She was Dr. Kirby's patient. She was referred to me only for the purpose of having the X-ray and microscopic work done and physical examination done. I specialized in diagnosis, which included physical examination, X-ray and microscopic. Dr. Kirby did surgery. She was Dr. Kirby's patient. I worked there with her for months and months and months. I don't know where the records are that I made at the time. St. Luke's Hospital is out of business, has been out of business since Dr. Runyon died about 1934. I was out of the institution from 1919 after I examined Miss Hill, to 1929. Then I did X-ray and laboratory work for two or three years up to the time Dr. Runyon died. I examined Miss Hill three times. I say three times, after this length of time without records, because we examined her just after she got out of the Army and then in 1921 she was

(Testimony of Dr. Albert G. McGill)

back in Little Rock for a short time and made my office her headquarters while she was here. After she had been back a few days she said she was having a fever. I examined her one time at St. Luke's. I may have been three days examining her, however. It was a very short time which developed from the time she came back to the institution as a nurse and up to the time I examined her—probably a few days, a few days I would say. During the time she was discharged up to the time I examined her she had been around the hospital. I had no supervision of nurses, but I worked with them every day.

In my first examination I said I found rales of the lungs, tubercle bacilli in the sputum and a large heart. I got the impression that she suffered from mitral insufficiency and mitral regurgitation from the big heart. Her heart was so big the valves would not meet. I think the heart was enlarged so that those valves would not close. Possibly the same thing that caused the tuberculosis caused the heart to enlarge, that is, probably the flu she had while in the service. Large hearts, tubercular conditions and valvular diseased hearts come from infections, and the infection she had was flu. My X-ray showed trouble with the valves of the heart. The X-ray showed a big heart, but those leaks are easily detected by putting the ear up against the chest, or a stethoscope. I made that kind of an examination. I thought I did say something about that in my former testimony. In my former testimony I stated that it was a large heart and that my examination was made by X-ray, that is an X-ray report. Now I state I used a stethoscope—I remember definitely that I did, that is an X-ray report and a large heart is

(Testimony of Dr. Albert G. McGill)

far as you can go with an X-ray on a heart condition. If one has mitral insufficiency the effort nature makes to overcome it—it makes the heart muscles stronger. When one gets such a leak we put him to bed and keep him there a long time. She had this heart condition from a few weeks to a few months. Whether it would take some considerable length of time for one to have valvular heart trouble to be afflicted with an enlarged heart, as this patient was, would depend on what produced the large heart. If the patient had an infection such as this patient had the heart was probably dilated, in which case the large heart would produce the valvular lesions.

At this stage of the trial the following proceedings took place:

Q. In most instances, Doctor, isn't nature's effort to overcome valvular heart trouble successful? In other words, wouldn't it become compensated?

A. It hasn't become compensated in Miss Hill's case.

Q. That isn't the question I'm asking you, Doctor. In most cases isn't nature's effort to compensate that nature of trouble successful?

A. It is successful in that small percentage of cases in which the heart disease improves.

Q. What does it mean to compensate a heart?

A. It means that the heart get strong enough that it can beat with such terrific force that it can still force the blood through the body even though there is a flowing back or regurgitation of blood with each beat of the heart. Persons who have slight leaks of the heart may get compensation sufficient to lead a fairly active life by being careful not to over-eat or over-exert.

(Testimony of Dr. Albert G. McGill)

Q. Isn't it true that many men or women afflicted by heart trouble such as you found in your first examination of this patient, go on through life and live their allotted time and die of some other disease?

A. No.

Q. That isn't true?

A. No, not with a person with as bad and as big a leak as this person had.

Q. What do you mean by big leak?

A. So much of the blood is flowing back that every beat of the heart couldn't be overcome by compensation, and the lady wasn't able to work.

Q. That's not responsive. The condition that you observed at that time was such, you say, that she couldn't do nursing?

A. That is right.

Q. But nursing is rather a strenuous task?

A. It is.

Q. It requires heavy lifting and loss of sleep?

A. Absolutely.

Q. Are you familiar with any other calling a person of her education could follow without danger to her condition and her heart?

A. No.

Q. This patient, in your conception, has gotten considerably worse since you testified before?

A. No, she is about like she was.

Q. I mean your conception of her condition since you first examined her.

A. I have had from 1919 to 1936—a period of seventeen years. If you have had somebody under observation

(Testimony of Dr. Albert G. McGill)

for seventeen years, and no improvement in heart or lungs, it will be reasonably certain that there will never be.

Q. I'm talking about the first time you examined her. Your conclusion now is, according to your testimony, that she was at that time in a great deal worse condition than you thought at that time she was.

A. Yes, subsequent advance has shown us that her condition is even worse than we thought it was.

Q. You reached that conclusion, yet during this seventeen year period you examined her twice, once in 1921 and once in 1936?

A. Yes.

Q. You say you advised rest for her?

A. Yes, rest is the most important thing.

Q. What did her physician, Dr. Kirby, advise?

A. That was his advice, too. In fact, that was the advice of the whole staff, including Runyon, Kirby, myself, Carruthers and others.

Q. Now, at the time you first examined her you say that she had tubercular bacilli in the sputum?

A. Yes.

Q. You got that by microscopic examination?

A. Yes, that's right.

Q. Does that indicate an active tubercular condition?

A. Yes.

Q. Would you say that a patient would have active tuberculosis when the microscope reveals bacilli independent, or whether or not the patient had fever?

A. No.

Q. Isn't the presence of some fever the symptom of active tuberculosis?

A. It is.

(Testimony of Dr. Albert G. McGill)

Q. Isn't tuberculosis in its incipient stage curable?

A. It is arrestable in many cases. However, that was incurable because of her heart condition.

Q. Now, Doctor, you had not known anything about her condition between 1921 and 1936?

A. Except what she told me.

Q. So far as you know during that period the tuberculosis may have become arrested and the heart compensated?

A. The tuberculosis may have become arrested, in fact it might have been arrested two or three times in that period, but the heart has never been compensated because it's just like it was. The blood pressure is too low for it to be a compensated heart. The blood pressure is so low that the patient could not do anything.

(At this stage of the trial the witness was handed an affidavit dated June 21, 1933, which he identified as having been executed by himself, and he testified further on

CROSS-EXAMINATION

as follows:

That's a report on an X-ray examination of Miss Hill. That's an original affidavit made by me that I introduced before. The purpose of making that affidavit—somebody came to me from the Veterans and wanted it, I don't remember for what purpose. I think it was for the purpose of reflecting her physical condition in January, 1919—her X-ray condition.

I do not know if this affidavit was made for her to use for her own advantage.

I knew at the time the affidavit was given by me to reflect her physical condition as revealed by X-ray at the

(Testimony of Dr. Albert G. McGill)

time I made the examination. My explanation that I didn't mention any tuberculosis in that affidavit—that was concerning her heart condition. As to my saying she was getting the affidavit for her benefit, I don't know about that. As to whether it was to reflect her condition, I had a letter from somebody wanting me to get up records on the condition of her heart. With regard to my explanation of this when I testified before that somebody must have left it out in making a copy, they may have. That affidavit is a copy, that was made in 1933, the original was made in 1919. I made that affidavit June 22, 1933. It was copied from the original. Copied from the record I made at the time I examined her. I did state I didn't know what had become of that record. I had those records in 1933 and my affidavit is copied from them. S. B. McGill of Louisville did the copying. I think those records it was copied from were sent along with it to the Veterans Administration. I think so because after I gave the affidavit I supposed I was through with them and I thought they would use them. I don't know what became of the records. I am sure that affidavit was copied from the records because I sometimes prepare papers like that from old records. I brought my own records from St. Luke's Hospital when I left there. I think this was taken from a record. I don't recall when this affidavit was made nor the purpose of its making. I suppose the reason why they would want a copy of this record reflecting heart trouble and not the tuberculosis was because she was suing for heart trouble. That's the worse trouble she had. I didn't know, as a matter of fact, she was suing for tuberculosis. I haven't seen her complaint. I testified that she had tuberculosis and that she has not recovered

(Testimony of Dr. Albert G. McGill)

from it. I alone didn't advise her in 1921, but the hospital staff. I testified that that is one reason why she couldn't work as a nurse. In making this affidavit I didn't refer to tuberculosis at all because they didn't ask about it. The same record that they copied this from would reflect the trouble of tuberculosis too—it would probably, but on another sheet of paper. In fact, records of her examination such as she got specified fifteen sheets of paper would be used. I state here a mitral murmur was heard and that the X-ray revealed a large heart. That's all I had to say about it at that time. That condition of her heart was so serious that we never expected the patient to get well. I didn't say so in this affidavit. My explanation—that was a report of an X-ray examination. If I were to read this statement as a record of some one I had not examined and it stated a mitral murmur was heard and the X-ray revealed a large heart, I would consider that a condition from which the patient would not recover, or a condition that would not become compensated. My explanation concerning the difference between my extents in this examination and the affidavit I made in 1933, in this deposition we are taking into consideration the patient's whole condition. In that affidavit we were talking about what one sheet showed concerning her heart condition at the time that examination was made. Independent of anything else, my examination of 1936 did not in any way reflect a condition of the plaintiff's heart in 1919, so all my knowledge of this patient's condition in 1919 is based upon the examination I made in 1919. Answering the question if at any time, subsequent to my original examination in 1919, the examination were to show that the heart was compensated, would it mean

(Testimony of Dr. Albert G. McGill)

at the time the examination was made that she was or was not in a curable condition—all heart lesions are serious conditions even though compensated. In so far as activity is concerned, one with a fully compensated heart is not seriously disabled, especially if he knows he has the condition and takes proper care of himself. If he doesn't know he has it he might get mad, excited, frightened, and fall dead. Miss Hill was here in Little Rock in 1921 and I examined her at that time. She was in my office for several days and the temperature she had then I attributed to the travel coming back here, but it persisted. She stayed here several days, and then went back west. She came here to take X-ray training in my laboratory and when she arrived here she came to the office and said she had fever. She went off and rested a few days and came back and said she still had fever. Instead of taking training in the laboratory she stayed around a few days and then she went on back at my advice. She thought and I thought when she came back that she had an arrested case. In fact, she had been told that at El Paso. But one of the ways to tell whether a person's condition is arrested is to let them get out of bed and do a little work. The plaintiff and I were friends before she entered the service and also close friends after her return from the service, to St. Luke's Hospital. Then she came back from El Paso for the purpose of taking X-ray training in my office. I haven't especially been very much interested in her except I was sorry she got a disease as serious as this. From my relationship with her and those things that have been stated here, I took a professional interest in her. I don't know why she came back here in 1936, except to be examined. She was here about four or five days. I

(Testimony of Dr. Albert G. McGill)

don't know where she came from. I don't think I asked her. It may have been a fact she came back here for the purpose of my making the examination to be used in this law suit. I don't know whether she came from Los Angeles or not in order to get an examination by me and use me as a witness in this suit. She gave me the name of a doctor in El Paso and another from somewhere else to whom she asked me to report my findings and that's the only purpose that I know of that she came back to Little Rock.

REDIRECT EXAMINATION.

The plaintiff was under the supervision of the staff of which I was a member while she was in Little Rock at St. Luke's. Her case and condition was discussed by the staff. I was present at those staff meetings. Her flu condition was discussed at the staff meetings. I have testified in this case before. I didn't have available records of the examination at the time I testified before. I had time to go over the testimony I gave before, since it was given—I looked it over a few days ago. The records about which some of this testimony has been given have been submitted to the Veterans Bureau at previous dates. So far as I know many of those records may now be in the Veterans Bureau. Investigators have called upon me relative to my treatment of Miss Hill, I mean Veterans Bureau investigators. In their investigations they indicated that they had records given by me and St. Luke's. The testimony I have given however was based on my actual examination of Miss Hill. I testified I examined her three times. She was under my observation for several days. I examined her with a stethoscope. It is cus-

(Testimony of Dr. A. D. Long)

tomary among doctors to make examinations of this sort and use a stethoscope. My relationship with the plaintiff was professional. I have no interest in the case—none other than to give the record as I see it.

DR. A. D. LONG,

called as a witness on behalf of the plaintiff, having been first duly sworn, testified under oath by deposition as follows:

I have lived in El Paso nearly twenty years. I have a sanitarium here. I am a graduate of the University of Arkansas and specialize in the treatment of diseases of the lungs. I know Frances Hill. She was in my office on and off as stated in my statement—I dont know just exactly when. I made an examination of Frances Hill some time in November, 1920. As near as I can recall, that is when it was and after discussing the case with her, we agreed that it was at that time. I am positive I examined her. The nature of the examination that I made—well, nurses usually go to doctors for just a little examination of their condition and I made an examination of her lungs and heart, but I kept no record of it. I recall what I found—I recall that she had very mild tuberculosis and heart lesion. It would endanger her recovery more, and her chance of recovering her health if she worked or engaged in any kind of strenuous work such as nursing, and it would probably make her heart condition worse to engage in a strenuous exercise.

(Testimony of Dr. A. D. Long)

CROSS EXAMINATION

My diagnosis was a mild form of tuberculosis. The stages of tuberculosis are usually designated as incipient, moderately advanced and far advanced. It is a fact that tuberculosis as a disease may be arrested in numerous cases. In my opinion about 90 per cent of incipient tuberculosis may be arrested, with proper treatment, also a great many cases of moderately advanced. At the time I made examination of the plaintiff in this case, in my opinion she was suffering from the moderately advanced stage of tuberculosis. I recall that she did some work, I do not recall the exact amount or nature. She says she took care of several of my cases, but I do not recall a particular case. I am testifying from my memory but a recent interview with her refreshed my memory. At the time I made my examination I made no written report of my findings. I do not recall when plaintiff left El Paso. I didn't even knew she was gone. She used to come to my office and I didn't know when she left. I had not heard from her. I knew her from one to four months, as near as I can recall.

At this stage of the trial the following proceedings took place:

BY MR. GERLACK:

Q. You stated her heart condition was a permanent condition?

A Yes.

BY MR. FOOKS:

I guess that should go out in view of the direct examination. Of course, he used the word "disability" in the direct examination. On cross examination he used the word "condition."

(Testimony of Dr. A. D. Long)

MR. GERLACK: Well, he is speaking of her heart condition. I think it is proper.

THE COURT: It sounds like the situation we just passed upon. I will let it stand.

MR. GERLACK: Very good. Let it go out.

MR. FOOKS: I understand the court is letting it stand.

MR. GERLACK: Very well.

MR. FOOKS: I would like to note an exception.

WITNESS: (continuing). Strenuous exercise is injurious to such condition. I do not recall the exact nature of the heart ailment. I am not at this time prepared to say that the plaintiff could not carry on any kind of occupation.

REDIRECT EXAMINATION.

At the time I made the examination I would not say that plaintiff could not engage in strenuous work. I advised her. She said she had to do some work, and I told her to be very careful about it and not to engage in strenuous exercise such as climbing stairs. At the time of the examination Miss Hill was suffering from active tuberculosis—that was my opinion. It was not an arrested case. The condition of her lungs would have something to do with her heart condition. It would complicate it—it would be worse than either one would be by itself. It is my understanding that Miss Hill was following her profession as nurse against orders, but she was doing some work.

(Testimony of Dr. W. S. Sharp)

RE CROSS EXAMINATION

I did not make an X-ray. I did not test her sputum.

REDIRECT EXAMINATION.

It would not be necessary for a man of my experience to make an X-ray or to test sputum of a patient suffering from tuberculosis in order to form an opinion, but I think one ought to have an X-ray in order to corroborate other information which would make the diagnosis more conclusive, but I am positive Frances Hill was an active tubercular at the time I made my examination.

DR. W. S. SHARP,

called as a witness on behalf of the plaintiff, having been first duly sworn, testified under oath by deposition as follows:

My residence is in Mesa, Arizona and my occupation is surgeon and physician. I graduated from Tulane, University of Louisiana in 1907. I have practiced medicine continuously since graduating and am now actively engaged in the practice of medicine. My office is located at 60 South Macdonald Street, Mesa, County of Maricopa, State of Arizona. I was practicing medicine in 1919 and 1920, at El Paso, Texas, privately and also on the staff of the El Paso and Southwestern Railway Company. I am acquainted with Miss Frances Hill. I met her early in 1919 at El Paso. Her occupation was that of a nurse. I employed her as a nurse on some of my cases. I made a physical examination of Miss Hill during the time of my acquaintance with her and my association with her. That was during the time she was nursing a pneumonia case

(Testimony of Dr. W. S. Sharp)

for me, for Mr. R. Parker. That was during the early part of 1919. I don't recall just how early, but it seems to me about February or March, 1919. On my examination of Miss Hill at that time I found—well, the occasion of that examination was that I secured Miss Hill to attend this Mr. Ralph Parker, who was a personal friend of mine and while nursing this case Miss Hill had a complete breakdown and I was called to see her at the hospital. I examined her and found that she had an arrested case of tuberculosis, (quiescent). The situation seemed to be that this condition was aggravated by her work and then she also had a heart condition that contributed to her breakdown materially. Mr. Parker was suffering from double pneumonia. Miss Hill was also suffering from heart ailment. She had, as I recall it, myocarditis and a heart condition aortitis, an inflammatory condition of the aorta. After I examined Miss Hill I advised her to take an extended rest. She was unable to continue with her work in this particular case. I do not recall whether Miss Hill performed any nursing in El Paso, after that date. She later in the year did some work, just to what extent I am not in a position to say. As I stated, following that, as I recall, she did some work. Explaining this particular case, this young man was a very good friend of mine, the entire family were friends of mine. That is why I recall this case and the severity of this case. That is the case she had the breakdown on—the Parker case. I don't recall any other case Miss Hill was employed on—not any more than this—she was used in some other cases after that. After I found her to be not well I employed her after that because there was a great demand for nurses during that epidemic and we had to use

(Testimony of Dr. W. S. Sharp)

any one we could get to go on a case. I had occasion to examine Miss Hill as to her physical condition after the time of her breakdown that I referred to above—I examined Miss Hill last year, 1935, when she was through here. Miss Hill at that time (1935) was suffering from myocarditis and aortitis and also active tuberculosis of the lungs.

CROSS EXAMINATION

I have specialized in surgery ever since I have been here. My examination of the plaintiff was in 1919. I had an electro-cardiograph. She had myocarditis. It is a diseased condition of the heart muscle which results in weakening of the heart muscles. Defining aortitis—that is usually a resulting condition from myocarditis. It is an inflammatory condition of the aorta valves of the heart and of the lining membrane of the aorta itself. The symptoms which she was found to have with reference to my examination of Miss Hill in 1919, which disclosed these diseases which I have mentioned—well, as I stated before (this is all from memory of the case) I recall she had a general breakdown at that time as a result of her condition, and this other situation that I speak of, I wouldn't attempt to enumerate the symptoms at the time because I have no record of the case available. I don't recall that Miss Hill gave me a history for thyroidectomy. If the facts disclosed in this case that the plaintiff had some two years prior to the time I made my physical examination an thyroidectomy, it is not possible or probable that the heart condition was a result of that operation. In my opinion that previous operation did not have any effect whatever on the heart condition I found in 1919.

(Testimony of Dr. W. S. Sharp)

At this stage of the trial the following proceedings took place:

BY MR. WOOD:

Q. Doctor, assuming that the medical history in this case, as shown by the reports of twenty-seven doctors that examined the plaintiff between 1919 and 1935, in which the heart was shown to be normal and fully compensated, is it not likely that the heart condition you found in 1919, was an aftermath of the thyroid trouble which existed in 1917, and that such evidences were symptoms of the heart trouble that you found, were only temporary in character?

A. I am only stating what I recall I found at that time.

Q. Well, Doctor, assuming the fact which I propounded in the previous question as being true, will you not say that the condition you found was of a temporary character?

A. I don't think so. The reason is, I examined Miss Hill again last year.

Q. Well, Doctor, in answering the question the way you do, are you assuming that Miss Hill had competent physical examination from 1919 to 1935, during the time which you did not see her, and the heart condition was normal and fully compensated?

A. I think that is calling on me to answer a vague situation there. I think the examinations would stand on their own merits.

(Testimony of Dr. W. S. Sharp)

Q. Was the condition which you found in 1935, when you examined her the same as it was in 1919, when you examined her?

A. As I recall, her condition in 1935 was more pronounced; her symptoms were more pronounced.

Q. That is, with reference to the pulmonary conditions and the heart conditions.

A. Yes.

Q. So far as the pulmonary tuberculosis was concerned, I believe you stated it was active in 1935, whereas, in 1919, when you examined her, it was arrested or quiescent?

A. As I recall, it was quiescent in 1919, or had been, I would say.

Q. What effect, Doctor, would the industrial activities of the plaintiff Frances Hill, that is carrying on her occupation, have upon the tuberculosis condition?

A. I would say it would aggravate it.

Q. And what effect would her industrial activity have upon the heart condition?

A. My answer would be the same.

Q. Assuming, Doctor, that after discharge from the Nurses' Corps, plaintiff was engaged as a nurse at St. Luke's Hospital, after which she took nursing assignments on private cases until she entered vocational training in 1921, with the employment objective as an X-ray technician. That between 1922 and 1923, she was registered at a Nurses' Registry, during which period she took assignments regularly as they were offered; that she was

(Testimony of Dr. W. S. Sharp)

engaged as a nurse for a period of approximately seven months from January through July of 1923, in an Indian school at Phoenix, Arizona, where she was required to handle Indian babies, and that she was subjected to a physical examination under Civil Service regulations prior to entrance in this employment; that from November 1924 to March 1925, she resumed her occupation as a nurse with the same Indian School for a second period of employment, and her duties were the same as heretofore described; that for her second period of employment her salary was increased over that received in the prior employment. Assuming these facts, Doctor, would this show that the industrial activities engaged in by the plaintiff, aggravated any lung or heart condition which you found in 1919, or does it not tend to show that the plaintiff's physical condition was improving after your examination?

A. Evidently an improvement. * * *

Q. I understood you to say, Doctor, on direct examination that you employed Miss Hill on other cases, but after the case you had for Mr. Parker, which formed the basis of my question?

A. Yes.

Q. In other words, was it necessary for you to get rid of her on those other cases because she wasn't performing her duties well?

A. As I stated before, Miss Hill was not well, and she was not used regularly. We did use Miss Hill some after

(Testimony of Dr. W. S. Sharp)

that, as I say, there was a shortage of nurses due to the epidemic, and we had to use most anyone that we could get.

Q. Was it ever necessary for you to discharge Miss Hill on the subsequent cases?

A. I don't recall as we did.

(Witness continuing) Having my attention directed to the tuberculosis condition which I found in 1935, when I examined the plaintiff, and using the classification of the American Medical Association for tuberculosis, I will state the stage of Miss Hill's condition at that time—she was an active tubercular. Regarding the degree of activity, she was an active tubercular at that time and also at that time she had an asthmatic condition. In 1919 when I examined her, my recollection was that her tuberculosis had been quiescent.

REDIRECT EXAMINATION

I stated on cross examination that I specialized in surgery, but I was doing general practice in 1919. All through my practice of medicine I have done general practice. I have testified from memory because I don't have the records. They were disposed of when I disposed of my practice in El Paso in 1926, but I do distinctly remember the case of Mr. Parker and Miss Hill, the plaintiff in this action, being employed in that case, and the examination I made of Miss Hill in 1919 and also in 1935.

(Testimony of Dr. W. S. Sharp)

BY MR. GURTLER:

Q. Now Doctor, I want to direct your attention to the long hypothetical question propounded by Mr. Wood on cross examination, with reference to the plaintiff Miss Hill's activities in different parts of the United States, Indian Schools, etc., in which he concludes by asking you if this would not show that the plaintiff's physical condition was improved after your examination. Now, as I recall, your answer to that question was "evidently an improvement." Now, Doctor, when you so answer, is it not true that you must also assume that the question propounded by Mr. Wood gives a complete and detailed history of her physical condition, as well as her industrial activities during the period covered by this question? In other words, assuming also that there were no physical breakdown on the part of the plaintiff during this period?

A. Yes.

RE-CROSS EXAMINATION

BY MR. WOOD:

Q. Doctor, directing your attention to the last question, as propounded by counsel for the plaintiff, wouldn't the industrial history alone, as outlined in my hypothetical question, which I propounded, indicate an improvement of the condition of Miss Hill in 1919?

A. Yes.

(Testimony of Bertha Case)

BERTHA CASE,

called as a witness on behalf of the plaintiff, having been first duly sworn, testified under oath by deposition as follows:

I reside at 1493 East Roosevelt, Phoenix, Arizona. I have resided in Arizona for twenty-two years. I own and operate the Doctors' Directory. My duties are to take telephone calls for doctors and give out such information as the public may require concerning doctors. I come in contact with registered nurses—I did have the Nurses' Directory in connection with the Doctors' Directory for eight years. I conducted the Nurses' Directory in 1922. From 1921 to 1929—no, part of 1929. I knew Miss Frances Hill. I first met her in 1922. She came in to register as a nurse. You see, there is only one registration and they are on call. After registering with me as a nurse in 1922, she was then on call to render professional services as such nurse when she was able to work. I sent her out on private duty—light cases; short, light cases. Regarding how long she would work at a time—well, if she held a hospital position it would be only a matter of a few months. I couldn't send her to a hospital where heavy work was required. If she was doing private work she might take one or two cases or more, but they were all light short cases, and that gave her a period of rest between times. It would depend whether I would send her out on calls shortly after finishing a job. Sometimes I could, and sometimes it would be a period of several

(Testimony of Bertha Case)

weeks. Concerning the amount of time she was able to work—I would say to the best of my remembrance it was not more than half of the time. I don't mean she worked six months and rested six months. I mean, it would be just as she could work.

CROSS EXAMINATION

I can't tell you how many times, how many cases she was on in the year 1922. It runs in my mind now that in 1922 she did but very little. I can't tell you how many cases she was on in 1923. I have no record. I have no record of how many cases she was on in 1924. There was a little period that she worked more than she usually did. She worked more probably in between 1924 and 1928. I can't say definitely just what period, but somewhere near that time. She worked a little more than she did when she first came back from the service. Then she was unable to do very much. What little work she did do had been too much for her. Of course that is merely my opinion of the case; she was under the doctor's care and I got reports from the doctors at that time. She lived right near me and I was in close touch with her. My information as to her condition was from the doctors' reports and from seeing her. On the average, from 1921 to 1929 when she was registered with me—well probably during that period she would be half the time working, but some years she would only be working a few months. Some years she would work more than she would other years. The year she was in Hayden, sometimes they would have two or three light cases and then again they wouldn't have anything and she wouldn't

(Testimony of Florence Scales)

have a thing to do. It was rather an unusual condition, but sometimes she had very little to do. That was in Hayden, in 1924—something like that. I wasn't up there with her. The information I got was from some one else. However it is the registrar's job to know what is going on. I had about 100 nurses listed with me or registered with me. During that period I had thirty-five to forty-eight doctors.

FLORENCE SCALES,

called as a witness on behalf of the plaintiff, having been first duly sworn, testified under oath on deposition as follows:

I reside in Scotch Plains, New Jersey. I am a graduate nurse at Bonnie Burns, Scotch Plains, New Jersey. It is a tuberculosis sanitarium. I received my training and graduated at St. Barnabas Hospital, Minneapolis. I am a registered nurse in Minnesota and Arizona. In order to be a registered nurse you have to pass a State Board Examination. In 1922 I was employed as a nurse at St. Luke's Hospital, Phoenix, Arizona. I was on general duty. From 1923 I was head nurse for eight and a half years. The nature of the illness of the patients at this particular institution was tuberculosis. I did nursing with private tubercular patients in 1921. In my nursing course we had courses on tuberculosis. I graduated in 1918. I was at Bonnie Burns Sanitorium three years last August. I knew Frances Hill, a nurse, in 1923. I became acquainted with her by calling her on a private case, from the directory, the Nurses' Directory, in Phoenix. I called for a nurse and she responded to serve as nurse to a

(Testimony of Florence Scales)

private patient. After that occurrence in 1923 she worked on and off doing nursing in St. Luke's Home up to 1930, doing private nursing, a few days now and again on general duty. I hired her on my own staff to do general duty. The occasion to hire her for general duty for a few days—well, the absence of another nurse through sickness. I observed Miss Hill while she performed her nursing duties at the hospital between the years 1923 and 1930. I had occasion to observe her while she was actively engaged in her nursing duties—while she was on general duty during the time I employed her. I observed about her while she was doing her nursing duties, extreme shortness of breath; coughing; expectorating; easily tired; very easily upset about small things, annoyances; nervousness; no endurance; pains in chest at times; cyanotic; unable to make beds without extreme shortness of breath. Sometimes I observed her socially while she was not on nursing duty during the years 1923 to 1930. I noticed her breath while she wasn't on duty and at leisure. She had shortness of breath, even while resting. She wasn't able to handle a patient in a wheel chair without assistance. I noticed when she tried to do that she was extremely short of breath. That condition would be with her when she had occasion to push a wheel chair with a patient in it. When she had a private patient she would not be able to serve that patient during the regular nursing hours throughout—I gave her a rest hour. I gave her a rest hour because I didn't think she was able to carry the case without it. That rest hour would come generally in the afternoon between two and four. During that rest period she would go to bed. I noticed that she coughed particularly in the morning or on exertion. Her appetite was poor and

(Testimony of Florence Scales)

she complained of indigestion at times. Her voice during that period at times was husky. She would become nervous and irritable at times. The small annoyances that arise in people's lives, she would get very easily upset. She was never hired for steady general nursing. She would request such employment, but she wasn't given such employment for the reason I did not consider she was able to carry it. Whether she was able to carry the duties of a private nurse during this period of 1923 to 1930, well—when we had her she had assistance. Without assistance I do not think she could have been able. We kept her on our list for private patients, because I thought she was deserving it, having been an overseas nurse and that was the only means for her support. When she had to walk any distance she was very short of breath on any exertion. She could not work continuously for a period of several weeks. She wasn't physically able to. Outside of her physical condition she was a competent nurse. She appeared to be willing to work when she was able to. She wasn't the complaining type of person. She was very easily upset and nervous. Insofar as her energy was concerned, it was below par. She complained of pain in the heart region in my presence. Her lips became cyanotic. During the time she was under my observation I don't recall whether or not she lost any weight in so far as I was able to notice. She suffered from frequent colds. Her general color was very pale. I haven't seen her since 1930.

(Testimony of Florence Scales)

CROSS EXAMINATION

I was in contact with Miss Hill from 1923 to 1930. She came to the hospital on special duty—I would say approximately six months out of the year, that is, covering different periods scattered throughout the year—at St. Luke's Home, Phoenix, Arizona. She was what you would term a special night nurse, a nurse on special duty from 1923 to 1930. I couldn't recall exactly what month in 1923—it was quite awhile ago, but I would say in January, 1923. That is when I was head nurse and when I would be calling nurses so I can date it from that. She was alternately on duty as special nurse until I resigned in September, 1930. She averaged about six months in a year. She wasn't a resident of the hospital. When she wasn't on duty there she had quarters down town. These complaints I spoke of, I observed during the time she was under my observation at the hospital. There were six nurses under me. I had to give her assistance sometimes. That was unusual at the hospital. Other nurses did not have assistance at times. I noticed this condition immediately on her coming there, on exertion. That was the beginning of my acquaintance with her in 1923. I didn't come in contact with her at any other place than in Phoenix. I never saw her before I went to Phoenix.

REDIRECT EXAMINATION

Some mention was made that she was a night nurse—she wasn't a night nurse, she was a day nurse. We had 100 patients at the hospital. The six nurses that I spoke of were on general duty, and there were patients who sometimes hired private nurses and in that capacity

(Testimony of Florence Scales)

Miss Hill served. Other nurses didn't have any trouble in handling a wheel chair with a patient in it. No other nurse had any trouble in making a bed. It is an unusual condition for a nurse to have difficulty with these two items. That is one of the reasons why Miss Hill stands out in my mind, and her condition. The other things that she did or was unable to do that an ordinary nurse could do without assistance—well, on the least exertion she was very short of breath. I think that was the most outstanding thing that was absolutely different from other nurses, and because of that, besides not being able to handle a wheel chair and make a bed, she was unable to lift a patient, walk up an incline, even rapid walking; lifting anything heavy. Sometimes I observed her socially during that period of time. The conditions that I spoke of were present during these social times.

RECROSS EXAMINATION

This private duty service applied only to special patients who wanted a private nurse. I do not know her physical condition prior to the time I called her in. I observed her physical condition which I have spoken of, the first case she was on. I continued to call her from 1923 to 1930. When I say that she averaged in my mind in this period about six months of the year—I am putting that approximately. I absolutely couldn't say in 1923 she was employed, because I have no record and nothing to date from. I am doubtful if there are any records of the time that she served there. When nurses are called on special duty they do not come under the hospital. The patients paid the nurses on special duty personally so it really had nothing to do with the hospital. The six months period is an approximate statement—six months out of the year.

(Testimony of Dr. A. J. Wheeler)

DR. A. J. WHEELER,

called as a witness on behalf of the plaintiff, having been first duly sworn, testified on oath by deposition as follows:

My name and address—A. J. Wheeler, Albuquerque Indian Sanatorium. I am a physician and surgeon. I have been licensed to practice as physician and surgeon since 1908 when I graduated from George Washington University. My practice at the present time is confined entirely to tuberculosis. I have specialized in tuberculosis or lung diseases for seventeen years. I know the plaintiff, Frances Hill. I first became acquainted with her about 1923 in Phoenix, Arizona. At that time I was connected with the Phoenix Indian Sanatorium. She was a nurse on my staff. She was employed by me on my staff at the Sanatorium from May, 1923, to July 1923. I examined her lungs during the time she was employed by me. The symptoms which led to my examining her lungs at that time—she felt tired, coughed, had slight expectoration, was nervous, weak, had some pain in her chest, with a slight afternoon temperature. Examination showed moist rales in the upper lobes. My diagnosis as to her physical condition at that time based on my physical examination, was pulmonary tuberculosis. The upper lobes of her lungs were involved with pulmonary tuberculosis. The condition of her tuberculosis at that time—I thought it was active. I do not recall how many examinations I made on Miss Hill during the time she attempted to work for me. Her employment was terminated—I advised her to stop work. My advise to her to stop working was based upon my knowledge of her lung condition. The kind of treatment

(Testimony of Dr. A. J. Wheeler)

it was advisable for a person in her condition to take was—well, rest until the activity and the disease should disappear.

CROSS-EXAMINATION

So far as I remember this woman started to work for me January 1, 1923, and worked until the latter part of July, 1923. She worked continuously throughout this period so far as I remember. Refreshing my recollection from this photostatic copy of an affidavit purported to be signed by me, at that time I made the statement that she worked—well, it doesn't say continuously. The statement would be consistent with the usual government practice of stating continuous service from the beginning to the end of the period, even though there might be temporary absences because of sick leave, annual leave, or leave without pay. This nurse was working directly under me. Her services were satisfactory. She was on duty I should say approximately ten hours a day. If there had been any serious interference with her work because of physical reasons, I would have known it. As a matter of fact, her physical condition would render her unable to perform her duties at any time. I think that was the reason she left. She worked until she got so she couldn't work any more. Her condition wasn't the same in January as it was in July when she left work, at least we weren't aware that she was ill when she started. I recall in the month of May when Miss Hill had an attack of influenza. I do not now recall the details, but I presume it would be the usual inquiry into the history, followed by the usual physical examination of the chest. I don't remember if I made a record of that examination. I don't

(Testimony of Dr. A. J. Wheeler)

recall if I took any X-ray plates. If I did I suppose there would be a record of them, I don't know. If there is on file, it is no doubt in Phoenix. I don't recall. I don't remember if I took a sputum test. My examination was probably a conclusion based on the symptoms which I observed.

Witness was shown an affidavit marked Exhibit A, and he identified it as having been executed by himself on September 19, 1923, and his attention was invited to the last paragraph of said affidavit which was read to the witness as follows:

“As Miss Hill admitted pulmonary activity some months prior, we concluded that she probably had a low grade tuberculosis which had become activated by her attack of influenza.”

At this stage of the trial, the following proceedings took place:

BY MR. ESPINOSA:

Doctor, refreshing your recollection from this affidavit, would you say that you made such an examination which convinced you that you could give a positive diagnosis, or would you say from this affidavit that you were merely making a conjecture from the history she gave you, or from the outward symptoms you observed?”

A. We would call it a tentative working diagnosis.

(Testimony of Dr. A. J. Wheeler)

The affidavit executed by the doctor on September 19, 1923, and bearing his signature executed before a notary public designated as Exhibit A, is as follows:

“Phoenix, Arizona

“September 19, 1923.

“TO WHOM IT MAY CONCERN:—

“This is to certify that Miss Frances Hill acted as temporary nurse at the East Farm Sanatorium from January 1 to July 31, 1923.

“During May there were a number of cases diagnosed here as influenza. Miss Hill at that time complained of pains over the long bones and chest, cough and fever. Examination of her lungs seemed to indicate old fibrosis of both upper lobes. At the time we found moisture anteriorly.

“Her temperature did not decline within a few days as our other cases but ran on until July 31st, ranging from 99.4 to 100 in the afternoons, at which time she left the sanatorium. She still complained of pain in the chest, also general weakness.

“As Miss Hill admitted pulmonary activity some months prior we concluded that she probably had a low grade tuberculosis which had become activated by her attack of influenza.

“(Signed) Dr. A. J. Wheeler.

“Subscribed and sworn to before me this 20th day of September, 1923.

“(Signed) E. F. Barrows,
Notary Public.”

(Testimony of Dr. A. J. Wheeler)

Do you want the affidavit of employer?

MR. GERLACK: Yes.

MR. SPAULDING (Reading):

“AFFIDAVIT OF EMPLOYER”

- - -

“(To be executed only if claimant worked or tried to work after discharge.

“In the Compensation Claim No. C-339791 of (Miss) Frances Hill personally appeared Dr. A. J. Wheeler of Phoenix, Arizona, who being duly sworn, states:

“Said claimant, after her discharge from the service on Feb. 3, 1919, was first employed by me on January 1, 1923, in the capacity of nurse with duties consisting of trained nurse in T. B. sanatorium. \$1080.00 per annum, 8 hrs. to 10 hrs. duty.

“Claimant continued to work for me until present time. During the period she was in my employ, the claimant worked practically continuously. Employment was terminated on . . . not yet terminated, by reason of physical signs in lungs indicate fibrosis both sides in apices.

“Miss Hill states she has lost three positions in the last year because of the work proving too much for her. Says she cannot stand night work.

“(Signed) Dr. A. J. Wheeler.’

“State of Arizona)

) ss.

“County of Maricopa)

“Subscribed and sworn to before this 6th day of April, A. D. 1923.

“(Signed) J. M. B. Brown.

“(Officer Administering oath.)”

(Testimony of Dr. A. J. Wheeler)

MR. FOOKS: I assume you will stipulate, counsel, that that was the government physician making his report to the Interior Department?

MR. GERLACK: Yes. Well, I think this particular affidavit is making his report to the Veterans Bureau. The other letter is making his report to the Chief of the Indian Service.

MR. FOOKS: One of them.

MR. GERLACK: The letter as to the Indian Service and the other as to the Veterans Bureau covering it.

MR. SPAULDING: It states in the corner that this is "United States Veterans Bureau, Medical Division," on the second affidavit.

The first is "United States Indian Service" stationery.

MR. FOOKS: Yes.

I believe the last answer was "We would call it a tentative working diagnosis."

MR. SPAULDING: What page?

MR. FOOKS: Page 5.

MR. SPAULDING: Yes, I have it.

MR. FOOKS: (Continuing)

Q. You stated on your direct examination that you thought the tuberculosis was active at the time of the examination. In most cases it is possible to absolutely ascertain whether a case is active or not active, is that no so?

A. We consider certain symptoms as evidence of activity, such as temperature, weakness, cough and expectoration.

Q. When you make a diagnosis, Doctor, depending upon your knowledge and upon the symptoms you find,

(Testimony of Dr. A. J. Wheeler)

is it not a general thing to make a positive diagnosis, and not make a diagnosis in which you say you think so and so exists?

A. Well, the situation is analogous to legal situations where you have circumstantial evidence. The only direct proof of the tuberculosis is the finding of the tubercle bacillus in the sputum. All of the rest of the evidence is circumstantial and you have to have sufficient weight to establish in your mind a preponderance in favor of tuberculosis; as there are cases occasionally in which you will be wrong.

Q. Do you feel that you submitted this patient to such an examination as would justify you in giving a positive diagnosis of active tuberculosis?

A. Why, we thought she had tuberculosis. We couldn't have been sure without finding the tubercle bacillus, but we found enough evidence to make us believe that she had it. That's as far as I can go.

Q. Your statement in this affidavit, that you concluded she probably had a low grade of tuberculosis then, was an opinion by you, based upon your examination, that she had tuberculosis?

A. Yes.

REDIRECT EXAMINATION

At the time Miss Hill worked for me my practice was examination and treatment of people having tuberculosis. The way we examine a person for tuberculosis or to determine their lung condition is to obtain the history of the patient's illness and then make a physical examination of the patient himself. Inasmuch as my previous statement showed that I found moist rales in both upper lobes, I

(Testimony of Dr. D. S. Duncan)

feel sure we actually made a physical examination of the plaintiff. You can't imagine rales—you have to hear them. The method by which you find rales in a person's lungs—you listen to the patient's breath sounds with a stethoscope.

DR. D. S. DUNCAN,

like Dr. Wheeler, was also a doctor in the Government Indian Service. Dr. Duncan's deposition, although taken on behalf of the Government, was called as a witness on behalf of the plaintiff, and having been first duly sworn, under oath, testified by deposition as follows:

I am a physician and surgeon employed by the Indian Sanatorium at Albuquerque. I graduated from the Medical Department of the Texas Christian University, at Fort Worth, Texas. I have engaged in my profession since 1912. I have not specialized in any particular branch. Shown what purports to be a photostatic copy of record of Phoenix Indian School, marked for identification as Defendant's Exhibit 1, and refreshing my memory by looking at that report, I believe that was signed by me. It is my signature. I remember a nurse who was at the Indian School in Arizona in September, 1924, by the name of Frances Hill. I made a routine physical examination of her at that time. I think we had to make a routine physical examination of all employees. This was for the purpose of finding out whether they were entering the service with a disability, and we recorded same. I examined the plaintiff at that time, submitting her to the necessary examination, yes, regular routine examination, which included weight, height and routine chest examina-

(Testimony of Dr. D. S. Duncan)

tion. Upon this examination it is stated, "Had active tuberculosis when discharged from the army, inactive now." I wrote that statement "inactive now." This girl came to work at the Indian School after having worked in the sanatorium with the history and understanding that she had had active tuberculosis, and I employed her because she was a competent nurse and I thought she might be able to do the work even with a disability, even if she had one. The basis of my stating there that her tuberculosis was inactive—partly upon physical examination and partly upon report of the Veterans Bureau—mainly upon the report of the Veterans Bureau. If I remember correctly I believe she brought a statement from the Veterans Bureau of her condition when she left there and when she entered their employment. We hired her knowing her history and knowing that there was a possibility of her having tuberculosis, and on the basis of the report from the Veterans Bureau—Dr. Fred Holmes, who is a tuberculosis specialist, having made same, and being a specialist, could not dispute his word, and in addition, the examination that I made.

CROSS EXAMINATION

I couldn't say definitely when she entered the employment of the Indian School, how long that was after she had left the sanatorium, but it was some time after she left the employ of the sanatorium. I knew her casually, not intimately, while she worked at the sanatorium. I don't know what she did during the period between the time she worked at the sanatorium and the time she started to work for me. I knew she had tuberculosis when at the sanatorium—it was common knowledge that she had been

(Testimony of Dr. D. S. Duncan)

diagnosed tubercular. When she came to me she needed work. Mr. Brown and I talked it over before we hired her. There was some question as to her health, and whether she was able to work, and we took that into consideration but thought that with the help of the Indians and due to the fact that she had only to supervise, she could handle it. Her record was good while employed at the sanatorium and she was a competent nurse. She really wanted to work. I understand she needed the work and being an ex-army nurse we felt we should give her a chance, if she could manage it. I figured the duties were not very strenuous and she could do them, because it was mainly supervision. She stayed at the Indian School under my supervision several months. I couldn't say how long—possibly five or seven months. I don't recall why she left that employment. I don't know whether it was because of appointive civil service position, or what. She didn't run around very much after work. She went to town occasionally. I don't recall during the time she worked for me, whether she had any of the common symptoms of tuberculosis, such as coughing, weakness, and so forth. I do not recall any symptoms. I don't know whether this routine examination was made the day she entered duty, but evidently it was made a short time after entrance on duty. On the routine examination which was made when in my employment I made no special lung examination—no microscopic, no X-ray—but routine chest examination. On the examination report it shows that under the heading "Abnormal Bronchial Sounds—PELA". The letters "PELA" mean prolonged expiration left anterior. That means a slightly abnormal

(Testimony of Dr. D. S. Duncan)

condition. It would probably mean the scar tissue from tuberculosis. The healed scar tissue is not necessarily active. If you have activity, you have rales over the area, you have inflammation in your lungs, but just simple prolonged expiration does not mean activity. There might be activity with prolonged expiration. Activity is based on several things besides prolonged expiration and rales. Tuberculosis is a treacherous disease. If a person has had tuberculosis, even though it has quieted down, that does not mean that the person does not have tuberculosis any longer, and if a person has had active pulmonary tuberculosis the tubercular bacilli may lie dormant or be carried to any other part of the body so that the condition might be aroused by any sustained exertion. I don't remember having made any other examination except the routine examination I have testified about. I would not have recalled that I made any examination had I not been shown the purported record. The points I remember about Miss Hill or her condition, was the question of employment at the time and trips made to the Veterans Bureau. Whether that would indicate there was some considerable doubt in my mind as to whether she was physically able to undertake the work—that part never concerned me as Mr. Brown did the hiring and firing and the Veterans Bureau was handling her case so I was a disinterested party. Not being a tuberculosis specialist I had to be governed by the opinions and reports of the Veterans Bureau men. I did not make a definite diagnosis myself as to whether or not her tuberculosis was active at that time. My diagnosis was based partly on the physical find-

(Testimony of Dr. D. S. Duncan)

ings and mainly on reports from the Veterans Bureau. Her tuberculosis might have been active during the time she was employed by me.

REDIRECT EXAMINATION.

It was my duty to pass on the health of an employee when the superintendent sent him to me to be given this examination that was called a routine examination. When Miss Hill came to me I knew her history and knew she had had tuberculosis—we knew that all the time. We were placed on notice that tuberculosis might be active—we considered that at all times. While not a specialist I do have common knowledge of tuberculosis and chest diseases. I gave her an examination which according to the answer I gave Mr. Brown showed prolonged expiration left anterior. I answered Mr. Brown that that indicated scar tissue. Prolonged expiration does not mean anything as far as activity or inactivity is concerned, and is a condition in the lung which has caused thick or hardening of the tissue and scar tissue that changes the sound upon expiration. I don't remember—after this examination, if I made a report to the superintendent as to her health and that she was able to work—we must have talked it over to have employed her. I examined her—all employees coming in are examined to indicate condition at the time of employment. I made that report to my superior—reported the findings. If I remember correctly this patient came to us for employment and claimed to be inactive and the Veterans Bureau had pronounced her inactive and my physical examination as far as I went did not show activity so I based my findings on that.

(Testimony of Dr. Harry Cohn)

RECROSS EXAMINATION

Q. Doctor, since nurses were so hard to get at that time, isn't it a fact that you were not very anxious to find this girl had activity, knowing she was competent?

A. We felt sorry for this girl.

Q. Are you a member of the National Tuberculosis Association, Doctor?

A. No.

DR. HARRY COHN,

called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

I am a licensed physician and surgeon, licensed to practice as such in this state. I graduated from the University of Denver Medical School in 1907. I have practiced medicine continuously since that time. My specialty is diseases of the chest. That includes the disease of tuberculosis. At the present time I am director of Tuberculosis Division of the Los Angeles City Health Department. Concerning my experience in public health service prior to that, I was with United States Veterans Bureau, United States Public Health Service in Los Angeles County, Cook County, Illinois; Milwaukee County, Wisconsin. In the United States Veterans Bureau I was medical director and medical officer in charge of Camp Kearny Hospital and medical director of the hospital at Fort Bayard, New Mexico. The hospital at Camp Kearny was devoted exclusively to the treatment of tuberculosis. The hospital at Fort Bayard, New Mexico, the same. For a year and a half I was commanding officer at Camp Kearny. I had occasion to examine Miss Hill, the plaintiff in this case. I first

(Testimony of Dr. Harry Cohn)

examined her in December, 1929. She came to the office stating that she was taken ill on her way from Phoenix; came in for an examination. I examined her at that time. She consulted me merely as a physician for treatment. Upon my examination I found at that time she was suffering from an active tuberculosis. She also had evidence of heart damage; she had a pleurisy at the base of the left lung. Her tuberculosis at that time was classified as moderately advanced. Lung tuberculosis is generally classified three ways: as a minimal, or early; moderately advanced and advanced. Her case was moderately advanced. Concerning her heart condition she had evidence of a widening of the large tube which leads the blood from the heart, and an enlargement of the heart, and the inability of the heart muscle itself to respond in a satisfactory way to any sort of exercise or effort. Her condition indicated a serious heart condition. Her condition of tuberculosis was serious at the time I examined her in 1929. I examined her again in April, 1935, last year, after this suit was filed here. When I examined her in 1935—at that time she had an active tuberculosis involving the upper lobe, which was approximately the upper third of the left lung. She had, of course, the same pleurisy that was noted previously and she had approximately the same heart condition, although it appeared to be somewhat worse at that time. I examined her again the latter part of 1935. In October, I believe. The condition of her health then—well, her lung tuberculosis had quieted down somewhat. In other words, the findings which indicated an active tuberculosis on other examinations were not present at that time, so the disease was marked “quiescent.”

(Testimony of Dr. Harry Cohn)

Her heart condition and her inability to respond to exercise was present at that time as it had been on all examinations. I don't recall the date I next saw her, but I have seen her several times *tis* year. Her condition at the present time—I believe the tuberculosis is quiescent. That is, it is not definitely active. It is one of those border line. That does not mean she is cured. Explaining the disease of tuberculosis and how the disease affects the patient—of course the disease of tuberculosis represents the growth usual in a lung tissue of these tubercle bacilli. They grow in very microscopic mounds. That is, the germs. They ordinarily grow in very microscopic mounds where nature is trying to wall them in. The disease usually spreads by the escape of some of these germs from one of these little tubercles into the adjoining lung tissue, and so gradually spreads. The patient becomes sick because of the poisons which are elaborated by these germs in their growth, and find their way into the blood stream and produce symptoms. Tuberculosis, like every other chronic disease, has its periods of activity and periods of remission. It is not a continual—ordinarily continual progressive disease. Most chronic diseases show these periods of remission, as does tuberculosis. Briefly, the thing that causes some people to have tuberculosis and other people not to have tuberculosis, we will say both living under the same conditions—the racial factor is a very important factor; the economic scale is a very important factor, and the housing is important; poverty is probably a very important contributing factor. Some people have relative immunity; other people have none. The type of germ has very much to do with it. Some germs in tuberculosis

(Testimony of Dr. Harry Cohn)

are very much more poisonous than others. The condition of the patient's health at the time he receives the infection is a vital factor in determining whether or not tuberculosis is going to develop. So in any given case so many factors operate. Concerning a person who exposes himself to persons who also have tuberculosis,—naturally tuberculosis is spread from one individual to another. That infection usually takes place by the sick person coughing and the individual who is exposed inhaling some of that coughed-up material. These germs are passed on from one individual to another. The contact is usually direct—it may be indirect—for instance, a child may play on the ground and may get on his fingers some tubercle bacilli, or on a plaything; but the common way is by direct exposure. It frequently happens that a nurse working in a tubercular ward acquired the germs. There is no cure for tuberculosis in the ordinary sense of a specific remedy for the treatment of tuberculosis. The treatment of tuberculosis is more or less a mode of living. A man who becomes sick from tuberculosis is taken out of industry and placed ordinarily in a sanatorium where he may have rest and freedom from worry, where he may have financial assistance and proper food and good housing, then he gets such medical and nursing care and perhaps surgical attention as his particular condition requires. In no disease is individual attention so important as it is in tuberculosis. Therefore it is probably better, generally speaking, to place people in a sanatorium than to attempt to treat them in the home. Concerning the effect of physical exercise or working at an occupation in connection with the disease of tuberculosis—well, it

(Testimony of Dr. Harry Cohn)

ordinarily accelerates the progress of tuberculosis for this reason: that the man who has tuberculosis carries a double burden. He carries on the normal activities which are required for life, and he tries to fight an infection, so that he burns up his tissues much more rapidly than normally, and he tends to lose weight, has a rapid pulse and fever. When he rests, generally speaking, his temperature goes down; his pulse decreases; his appetite improves; and he gains in weight. If he exercises, of course, the contrary happens and his disease is ordinarily accelerated. Generally speaking, working makes a person worse. In Miss Hill's case, the significance her heart condition has so far as tuberculosis is concerned—and vice versa—well, her heart condition has this particular effect upon her lung condition: the circulation, of course, in a heart which is not an adequate pump, is not so good as it would be in a pump that is competent. The tendency is for the blood to collect in the dependent portions of the lung and produce some congestion there. On the other hand, her tuberculosis, with a production of poisons, does injure the heart just as it injures other parts of the body, so that there is produced a more or less vicious circle, one acting to the detriment of the other. In other words, having this heart condition, she would have much less of a chance to make progress in a tubercular condition than if she didn't have a heart condition. The reverse of that is true so far as the heart condition is concerned, that it is aggravated by the tubercular condition. Her lung ventilation is rather handicapped by her lung condition. In other words, there is that shortness of breath in a pair of lungs which should be resting. I examined her for

(Testimony of Dr. Harry Cohn)

thyroid trouble. I did not find any. I found simply a scar where she had some operation on her neck.

Q. Now doctor I want to state this: Mr. Fooks said he would stipulate at the beginning of this trial, that in view of the fact that Dr. Cohn had heard all of the testimony at the two former trials, he would permit him to assume that he had heard the abstract of the evidence in this case.

MR. FOOKS: I think that is correct. I cannot recall any particular additional evidence. I think the doctor is fully familiar with the facts of the case. I am willing to waive the usual hypothetical question to save time.

(Witness continuing): I am familiar with the evidence in this case. Assuming that the evidence that I am familiar with in this case is substantially correct, and basing my opinion on the findings, and the physical examination in this case, but not taking into consideration the diagnosis or conclusions of other doctors, in my opinion Miss Hill's tubercular condition began or started or had its inception following shortly after the attack of flu and pneumonia while in service. I believe it has been testified to that this was in October and November, 1918, in Liverpool, England. Bearing in mind those facts that it was testified Miss Hill was discharged from the army on February 3, and returned to her home at Little Rock, Arkansas around January 20, 1919; that at that time she was examined by Dr. McGill and found to have a positive sputum with X-ray of the lungs showing infiltration and other definite evidence of tuberculosis; that she also had

(Testimony of Dr. Harry Cohn)

a mitral regurgitation—damage to the mitral valves of the heart. Assuming those facts and the other facts that I am familiar with in this case, in my opinion the degree of advancement of her tuberculosis at the time she came home from the army and was examined by Dr. McGill, and he found positive sputum, which means sputum is stained with a dye and put under a microscope, and the presence of tubercular bacilli is shown up through the glass, that is positive sputum, and that is one of the definitely unquestionable evidences of tuberculosis—assuming that she had that positive sputum and the X-ray showed definite infiltration in various parts of the lung, and also she was complaining of pleurisy pains in the lower part of the lung. Assuming those findings in connection with the hospitalization and the trouble she had had with the flu and bronchial pneumonia in France, I would say that the degree of advancement in the tuberculosis in the spring of 1919, particularly on or before February 3, 1919, was moderately advanced.

If she was moderately advanced, and assuming those facts of the findings to be true,—and assuming that I am entitled to take into consideration the subsequent history and present condition from my own examinations—looking back on the case in retrospect, the chances or probabilities of her being cured or completely arrested of tuberculosis in 1919, February 3, even had she taken the best of care and gone to a sanatorium and done everything possible—it is my opinion from those facts, that it would not be good. I mean by that, that the probabilities were very much against her becoming a case of arrested tuberculosis even if she had taken the best of care.

(Testimony of Dr. Harry Cohn)

At the present time I do not think there is a reasonable probability of her getting over this tuberculosis and becoming what is known as an arrested case. Concerning the fibroid type of tuberculosis which has been testified to in various findings that these doctors on examination found—nature is attempting to throw up scar tissue and wall off this tuberculosis. In other words, there are two types of tuberculosis: the soft spreading type, and the type that scars up as it goes along. We may have a tubercle here and scar tissue—tubercle forming here (indicating) and an extension along the other side and more scar tissue forming. That is what they call a fibroid type of tuberculosis. I believe from the history of this case as shown by the evidence in the court room here, that the tuberculosis was incipient or beginning in the fall of 1918 after she had the bronchial pneumonia, and by February, 1919, it had become moderately advanced. Concerning the test you put a person through to ascertain and determine whether or not they have attained a case of arrested tuberculosis, where it has previously been active—the patient should have no symptoms referable to their disease. They should have no tubercle bacilli in their sputum. You take X-ray films, and the X-ray films should show that the spots are at least stationary or healing and the patient should demonstrate the ability to take a prescribed amount of exercise daily over a specified period of time. The first examination I made of Miss Hill, I found tubercle bacilli in the sputum. I have not been able to find it since then. It does not mean a man does not have tuberculosis just because there was no tubercle bacilli in the sputum. If there are tubercle

(Testimony of Dr. Harry Cohn)

bacilli in the sputum, it means there is an ulceration somewhere discharging tubercle bacilli in the bronchial tubes. A man may have extensive tuberculosis without tubercle bacilli in the sputum. If you find positive sputum, you do not have to go further. I examined her heart—I had measured her heart. I have listened to it with a stethoscope. I have had her take bending exercises and straightening up exercises, testing the heart response, taking her pulse rate before and after, and after rest, and have taken her blood pressure on many occasions. So far as the measurements are concerned, her heart is not normal in size. In that respect I found the left side of the heart, that is that portion of the heart which pumps the blood into this large blood vessel supplying the entire body, called the aorta, is enlarged. That is what we call an enlargement of the left ventricle. Now, the aorta, this tube (indicating on chart) is also wider than normal, and that is the aortitis. Her heart, that is, the measurement across this way (indicating on chart) the transverse measurement, is approximately an inch larger than normal. The last time I examined her heart was today. I used a steel measuring stick in order to be able to see it under the X-ray. I had her in front of the fluroscope. When a person is in front of a fluoroscope it is possible to see the action of the heart and aorta. You visualize the action of the heart in front of the fluroscope. In other words, you see the heart beat and pump. There is nothing abnormal with her heart as I observed it except the rate of the heart is much faster than the normal rate. In other words, the normal rate for a woman of her age is approximately 78 to 82, while her heart rate is always above 94.

(Testimony of Dr. Harry Cohn)

The rhythm, instead of being a normal rhythm, is inclined to be irregular. Her pulsations are not normal. The significance that that has in connection with heart disease—well, it shows there is some damage to the heart muscle. In other words the heart muscle, instead of being truly muscular tissue, is in part scar tissue. Basing my opinion upon the evidence in this case, not taking into consideration the diagnosis or conclusions of other doctors, in my opinion she was suffering from a serious and incurable ailment for which rest was the prescribed treatment, and which would have been aggravated by work of any kind, at the time of her discharge February 3, 1919. That disease was a degenerative heart disease and she was suffering from a moderately advanced lung tuberculosis; chronic pleurisy.

CROSS EXAMINATION

The first time I saw her was in 1929. At that time she had a fibroid type of tuberculosis. That is known as a low-grade infection. The fibroid type is the chronic type of tuberculosis. As to the likelihood of a cure or arrestment, it is not correct that the fibroid type of tuberculosis is more easily arrested than some other types. That is essentially the chronic type of tuberculosis. The other type destroys people before it develops promiscuously, generally speaking. That is miliary tuberculosis—either that or the type that goes on to the cavities for formation. The patient ordinarily don't live over that period of years; they succumb. Miss Hill must have had a cavity once upon a time in order to throw up tubercle bacilli in the sputum. Where they have a positive sputum there is always a cavitation. You can't throw tubercle bacilli into

(Testimony of Dr. Harry Cohn)

the bronchus without having a hole leading into the bronchus. Both of her lungs were affected the first time I examined her—the upper portion of both lungs, the disease being more extensive in the left lung than the right. That involved more than the apices. While the right—it was just approximately in the apices, in the left it involved the greater portion of the upper lobe. The left had more involvement than the right. I was talking about activity, not involvement. The involvement stays there, just as her pleurisy always stays there. I mean, the pleural thickening is always there, but the activity is the thing that varies. I have made quite a few sputum tests. I am required to report an active case of tuberculosis to the State, but I am not required to report the sputums every time a sputum is examined. I did report to the State that her condition was active. The law requires me to only report it once. Each physician, when he examines a case of tuberculosis and finds it is active, is required under the law to report it. He doesn't report it every time he examines it; that is not the law. I made the report first in 1929. I have not made any report since. At this time it is quiescent. The law does not require me to make a report to the State when I find an active case of tuberculosis has become quiescent.

I made X-rays, I do not have them with me. Concerning how long it took me to make these examinations—well, the average length of time consumed in the examination is approximately one hour; it took me approximately that time in making my examination in 1929; probably a little more. In 1935—I say, they approximate each one an hour; within a few minutes, one way or

(Testimony of Dr. Harry Cohn)

the other. In 1935 I did not make my examination solely for the purpose of qualifying myself as a witness in this case; partly for it. The examination made in '36 was chiefly for that purpose. The only examination I ever made of this patient, except for purposes of qualifying myself as a witness was made in 1929.

It is possible to arrest tuberculosis. In the case of an arrestment of tuberculosis in its incipient stage, I do not expect, after the proper tests have been made to determine that the tuberculosis is definitely arrested, a reactivation of it; approximately 90 per cent of tuberculosis in its incipient stage remain well after arrestment occurs. In arresting tuberculosis in the moderately advanced stages, approximately 60 to 70 per cent we expect to stay arrested after the proper tests have been made. If a patient were shown to be arrested for a period of six or seven years, during which period of time they took reasonable exercise, and in some instances engaged in strenuous exercise, and there was no reactivation of that disease within a period of six or seven years, I would be justified in believing that that tuberculosis had become definitely arrested. As a matter of fact a period of even three years I would be justified in believing that that case of tuberculosis had become definitely arrested—less time than that. Six months is the average time. If it is properly classified six months is the ordinary accepted time. Two years is usually classified as apparently cured. That is, according to the records of the National Tuberculosis Association, if the person is living under normal conditions. In the case of a major operation of a patient—concerning whether or not I would recommend a general anaesthetic be given

(Testimony of Dr. Harry Cohn)

to a patient of mine who is suffering from a severe heart or lung condition—That is difficult to answer because it is again an individual problem. You have to know your patient. I just simply can't answer that categorically. It is true in all well-conducted hospitals all operative patients are examined for the purpose of determining the condition of the lungs and their heart before administering a general anaesthetic. Heart and lungs are always examined before operations. It is generally accepted medically that where there does exist—speaking now generally—a severe chest condition in either the heart or lungs that they do not administer a general anaesthetic other than under conditions, we'll say, of most extreme emergencies.

Regarding this damage to the heart that I found in 1929, which condition still exists, and whether her heart condition was easily detected—all you have to do is to take one glance at it under the fluoroscope and know that it is a badly damaged heart. Suppose I had not the advantage of a fluoroscope—that I just made a stethoscopic examination—and whether or not I would say it was easily detected—well, that is again a question of the time you picked the heart up. There are probably some times when the heart is relatively quiet and other times when the heart would be quite stormy. That would depend upon the time the doctor put the stethoscope on the heart.

At the times I examined Miss Hill without the aid of the fluoroscope or an X-ray—one or the other—and concerning enlargement of the heart and damage to the heart, and whether that might be termed easily detected. Yes, sir, you can tell that her heart is enlarged by simply

(Testimony of Dr. Harry Cohn)

looking at the apex beat hitting the wall. It is out of the normal wall. Yes, sir, without the aid of a fluoroscope or an X-ray. I say, just by looking at it when she is stripped for examination you can tell. I mean by looking at her chest. After all, the heart beats normally will not hit in this fifth interspace an inch and a half outside of the external border, and if you look at it and find it an inch over here (indicating) to the left where it normally hits, you know there is something wrong with it. It is up to you to determine what is wrong with it. There are limits to a normal variation, and that is an abnormal variation. Most types of heart disease are progressive. That is, when you are talking about this chronic type of heart disease, they are progressive.

As it refers to her heart I have expressed the opinion that I believe that Miss Hill had such damage to her heart and also to her lungs on February 3, 1919, that she was then unable to take any activity—that is, exercise—without damage to her heart. Comparing her condition now to 1919 as it refers to her heart—I think it is very much worse today than it was in 1919. There is an entirely different condition than there was in 1919. There are only two valves involved now. The aorta and the mitral. Mitral regurgitation is simply a leaking heart, the valve does not close properly. The aorta valve, of course, is the same situation—that does not close properly.

Assuming that Miss Hill worked for a period of six years as a nurse on call from the registry the greater part of that time, and also during that period of six *months* was employed in three different institutions, the longest period for six or seven months, and the other period about

(Testimony of Dr. Harry Cohn)

four months, that she followed her profession as a nurse doing night duty and day duty as required, that she during that period of time worked approximately one-half of the time—and when I say “one-half of the time” I do not mean that she was working six months and off six months, but averaged about one-half of the time—and assuming that between the years 1924 and 1928—the latter part of this period between '24 and '28 she worked more than half of the time in order to average up the whole period to a half—and assuming the way I found her in 1929 and since that time—I still believe that her heart having withstood such exercise was damaged to such an extent at that time—1919—that she would be unable to follow any activity or take any exercise without injury to her heart.

Considering the condition that I found her in—the involvement of the two valves at this time—she is now absolutely incurable so far as her heart condition goes. By “incurable” I mean by that that there has been a permanent damage done. There is not a possibility of having that permanent damage remain stationary. The process will continue. There will be more scar tissue forming in her heart muscles, more scar tissue forming in the heart valves. There is certainly going to be impairment of the circulation in her heart muscle, which will be progressive. The thing does not stand still. When I say “the thing does not stand still” I mean the progress does not stand still—it does progress. That type of heart disease will progress. The condition in which I found her in 1929, 1935 and 1936 has progressed slowly—that is characteristic of that type of heart disease. The work

(Testimony of Dr. Harry Cohn)

that she did do undoubtedly aggravated the progress of the disease. Supposing she had not done anything during that period of time, just lived under the advice of a competent physician at the bed of the rest room, not taken any exercise at all other than under the competent physician's orders I do not think that the condition would have progressed to the point it has today. It would have increased over the condition she had in 1919. It would have been less marked—in other words, the expectancy of life would be greater under continued rest than it has been under her mode of living. If I were given a different set of facts, or some other facts were added to the facts that were given to me by Mr. Gerlack at the last two trials, I would not change my opinion as to the progress of this heart condition, except that I know her heart was definitely damaged in 1921, and if other statements were made between 1921 and the present time, it wouldn't change my opinion because the heart was permanently damaged in 1921, and there isn't anything further to damage the heart except what has already happened, so it wouldn't change my opinion as to the amount of damage she has.

At this stage of the trial the following proceedings took place:

BY MR. FOOKS:

Q Now, you have concluded, Doctor, definitely that the heart was definitely damaged in 1919, and you did not see her until 1929. What are you basing that opinion upon?

A Basing it upon the medical records.

(Testimony of Dr. Harry Cohn)

Q What medical records?

A Which were read in evidence.

MR. GERLACK: That were read in evidence at the last trial?

THE WITNESS: Yes, sir.

MR. GERLACK: You are referring, Doctor, to the official records?

THE WITNESS: The depositions.

BY MR. FOOKS:

Q Well, now, Doctor, I will refer you particularly to the records that were read in evidence at the last trial and which, at this time, is Government's Exhibit F for identification.

THE CLERK: That has not been introduced in this case.

MR. FOOKS: Well, anyway, I will amend my statement. It is the medical records that were read in evidence before.

MR. GERLACK: I have no objection if you want to make them the same number at this time.

MR. FOOKS: I will offer them at this time as Defendant's Exhibit next in order.

THE COURT: The next exhibit in order will be H for identification.

(The documents referred to were marked "Government's Exhibit H" for identification)

BY MR. FOOKS:

Q Now, we find, Doctor, the first examination was made on December 19, 1919. I shall not read to you the diagnosis: I will merely read you the findings.

(Testimony of Dr. Harry Cohn)

(The excerpts from reports of physical examinations comprising Defendant's Exhibit H for identification were read to the witness as follows:

December 19, 1919. Dullness, decreased breath sounds left lower lobe, friction rub same area.

April 7, 1920. Physical examination reveals roughening over larger bronchi.

May 13, 1920. Roughening over larger bronchi.

June 7, 1920. Lungs: Shape of thorax, full; weight, loss of, when, amount—has lost no weight; chest measurements, inspiration 38 inches, expiration 35 inches.

Location of normal percussion note—Am unable to detect any pathological condition in chest.

Auscultation, location of abnormal sounds—Am unable to detect any pathological condition in chest, except roughening over larger bronchi.

Rate of Respiration—Respiration 26.

Haemoptysis: None. No valvular lesion detected.

An X-ray report dated June 29, 1920. Lungs: Hilus shadows rather heavy and contain large number of calcified glands. Apparently some scar tissue, scattered throughout right side.

Conclusions: Markings not typically tuberculous. After careful consideration of all physical findings in this case, the writer feels that diagnosis of tuberculosis should have been given previously.

August 4, 1920. Physical examination revealed extremely well-developed and nourished. Chest full and

(Testimony of Dr. Harry Cohn)

expansion good. Some slight roughening on the larger bronchi, otherwise chest negative.

August 22, 1920. Physical examination: Looks well, well-nourished and developed, no chest deformities, expansion appears good and equal on both sides.

Palpation: Slight decreased tactile fremitus both lowers.

Percussion: Decreased resonance above second rib and third dorsal spine both sides, also both bases.

Auscultation: Increased vocal resonance above third rib and fourth dorsal spine right, and above third rib and third dorsal spine left. Broncho vesicular breathing above second rib and third dorsal spine both sides. Diminished breath sounds at both bases. No rales heard.

September 3, 1920. Physical examination: Plaintiff well-developed and nourished; chest full and expansion good. Evidence of hyperplastic pleuritis, left base, with some post-influenza rales, which may possibly be tuberculosis. Fibrosis right lobe, upper, especially posteriorly. In view of report of X-ray findings, we have hesitated to give this plaintiff a diagnosis of tuberculosis though the present examiner feels sure that this should have been done long ago.

October 21, 1920. In hospital from August 22, 1920 until October 21, 1920. Plaintiff was discharged and the certificate of discharge is as follows: "This is to certify that Miss Frances Hill, now a patient in this hospital, is an arrested case of pulmonary tuberculosis, and physically able to accept vocational training."

(Testimony of Dr. Harry Cohn)

Physical examination: Inspection: Chest broad and well-nourished. No depressions.

Mobility: No lagging, expansion equal.

Palpation: Tactile fremitus increased on right, not more than normal.

Percussion: Right impaired resonance below fifth dorsal and below third rib in mid-axillary line. Left. Impaired resonance above second rib and third dorsal.

Auscultation: Diminished breath sounds base with slight friction rub, mid-axillary line. No rales.

Left. Diminished breath sounds at base. No rales.

November 6, 1920. Physical examination: Inspection reveals plaintiff robust, well-developed and nourished.

Palpation and percussion negative.

Auscultation reveals broncho-vesicular breathing at right apex and increased vocal resonance about fourth rib and fifth dorsal spine right lung. A few clicks upper lobes, each lung. No rales in either lung. X-ray report by Dr. Cathcart is as follows: 'Lungs—Hilus shadows rather heavy and contain large a number of calcified glands. Apparently some scar tissue scattered throughout right side. Conclusions: Markings not typically tuberculous.' Roughened breathing over larger bronchi.

August 23, 1921. Chest examination: Chest full, deep and broad.

Mobility: Good.

Palpation: Fremitus: Negative.

Percussion: Right lung. Negative; left lung, negative.

(Testimony of Dr. Harry Cohn)

Auscultation: Right lung: Slight increase in voice and breath sounds at apex; bronchi-vesicular breathing same place. No rales before or after cough.

Left lung: Posteriorly just above the scapula there is a small area of granular breathing.

January 10, 1922. Physical examination: Well nourished. Temperature 98.3. Pulse 80.

Heart and Abdomen: Negative.

Weight 144 pounds.

Chest: Well formed

Palpation: Fremitus: Negative.

Percussion: Right lung: slightly impaired resonance apex to 2nd rib.

Left lung: Normal.

Auscultation: Right lung: Marked broncho-vesicular breathing and exaggerated voice at apex; no rales before or after cough.

Left lung: Normal.

Mobility: Expansion about equal and symmetrical.

July 5, 1922. Special tuberculosis report: Height, with shoes, 5 feet 3-1/2 inches. Weight (without coat) 140.

Sputum positive or negative? If negative, how many sputum specimens were examined? Has never had a positive sputum.

Shape of chest: Symmetrical.

Mobility: Good.

Palpation: Fremitus: Normal.

(Testimony of Dr. Harry Cohn)

Percussion: right lung good resonance left lung good resonance.

Auscultation: Right lung negative Left lung slight inspiratory roughening in left base posteriorly.

Summary: Roughened pleura in left base posteriorly.

February 15, 1923. Physical examination: Well-developed and very well nourished young woman. Color good. Eyes, ears, nose and throat negative. Heart not enlarged, regular, no murmurs. Abdomen, negative.

Special tuberculosis report: Time of day, 3:30 P. M., pulse, 72; weight, (without coat) 147.

Chest: Well shaped.

Mobility: Normal.

Palpation: Fremitus: Normal.

Percussion: Right lung slight decrease second rib and third dorsal spine. Left lung, slight decrease at apex.

Auscultation: Right lung broncho-vesicular breathing and increased whisper second rib and third dorsal spine. No rales before or after cough. Left lung prolonged expiration over hilus near sternum and at apex. No rales before or after cough.

Slight old infiltration both apices, most marked on the right without evidence of activity.

July 26, 1923. Well developed and fairly well-nourished young woman. Apparently not ill. Eyes, ears, nose and throat, negative. Heart, not enlarged, regular, no murmurs.

(Testimony of Dr. Harry Cohn)

Abdomen: Negative with the following notation made by the examining physician: "This patient complained of a rise in temperature in the middle of the morning. As I always found her normal when I saw her in the afternoon I made an appointment with her for 9:30 a. m. for several mornings, but she never returned."

Tuberculosis Report: Temperature 98.2 degrees. Pulse 72. Time of examination: 4:15 P. M. Height, with shoes, 62-1/2 inches. Weight, (without coat) 145.

Shape of chest: Broad, well shaped.

Mobility: Normal.

Palpation: Fremitus: Normal.

Percussion: Right lung: Decreased second rib and third dorsal spine. Left lung: Decreased second rib and third dorsal spine.

Auscultation: Right lung: Broncho-vesicular breathing and increased whisper second rib and third dorsal spine. No rales before or after cough. Left lung, increased whisper over hilum. No rales before or after cough.

Summary: Slight amount of infiltration both apices without evidence of activity.

August 27, 1923. Chest examination: Weight, (without coat) 147.

Shape of chest: Full.

Mobility: Normal.

Palpation: Fremitus.

Percussion: Right lung normal. Left lung normal.

(Testimony of Dr. Harry Cohn)

Auscultation: Right lung normal. Left lung breath sounds slightly distant.

Summary: Infiltration in hilus of both lungs as shown by X-ray. Left pleura slightly thickened.

October 23, 1923. Physical examination revealed a very well developed and nourished young woman. Scar of thyroidectomy. No symptoms of hyperthyroidism. No pathology found.

Additional Remarks: "If this patient ever had pulmonary tuberculosis, it has left no positive signs.

"Chest examination: Apices slightly hazy. Heart and diaphragm shadows normal. Hila shadows enlarged with moderate bilateral infiltration. Both lower and upper bronchial trees are thickened. Small cavity described in previous report in upper left lobe not visible in this examination. X-ray conclusions: Possible perihilar tuberculosis."

Temperature, 98. Pulse, 80. Time of examination 11:00 A. M. and 3:00 P. M. Height, with shoes, 62-1/2 inches. Weight (without coat) 145.

Examination of chest: Shape, normal.

Mobility: Normal.

Palpation: Fremitus, normal.

Percussion: Right lung normal; left lung normal.

Auscultation: Right lung normal; left lung normal.

February 27, 1924. Physical examination: Looks well, well-developed and nourished. Color good. Weight, 151 pounds. Temperature, 37 c; Skin and mucous membrane, negative; Vascular system, negative. Osseous system:

(Testimony of Dr. Harry Cohn)

Negative; Pulse, 92; Heart, negative; Abdomen, negative; Nervous system, Negative; Muscles and joints, Negative; Auscultation: Right lung: Broncho-vesicular breathing (slight) over apex posteriorly. Few atypical crepitations this area. Left lung: Breath sounds apparently normal. No rales. Pleural crepitations at base.

X-ray report with a summary of findings: No parenchymal infiltration either lung.

X-ray of chest: February 28, 1924. Films good. Bones negative. Right diaphragm smooth: Costo-phrenic angle clear. Left diaphragm hazy; costo-phrenic angle not shown on film. Trachea and heart negative. Hila increased in density with caseous and calcified nodules. The upper lobe bronchi both right and left are slightly heavier than normal; their borders are studded. Linear markings cannot be traced to the surface. The right mainstem bronchus shows some connected tissue change.

Summary: Fibrosis both upper lobes.

August 19, 1926. X-ray Report: Bony thorax is normal. The right apex is hazy, the left clear. There is much peribronchial thickening, together with several scattered calcified glands. The right lung presents a hazy appearance throughout. The left lung shows a few striated lines in the upper lobe. The heart is slightly enlarged in its transverse diameter. The right diaphragm is smooth and the left is adherent at the center of its dome.

April 24, 1927. Physical findings: General: Expression one of discontent; skin sallow. Head and Neck: Eyes react normally to light and accommodation. Tongue

(Testimony of Dr. Harry Cohn)

slightly furred; nose, throat, tonsils and teeth normal condition. No glandular adenopathy. No thyroid enlargement.

Chest: Normal; heart normal position; apex beat in the fifth interspace; heart sounds are normal. Lungs show moderate amount of fibrosis on X-ray. No abnormal sounds in lungs. No rales.

Abdomen: Tenderness under right costal margin with some muscle rigidity of right rectus. Tenderness over lower portion of right rectus, especially marked on deep pressure.

Neuro-muscular: Normal.

Cholecystogram shows retention of dye in gall bladder after thirty-six hours. Appendix not visualized. Tenderness in right iliac region on fluoroscopic examination. X-ray diagnosis was chronic cholecystitis and chronic appendix.

Anesthetic begun 7:45 a. m.; operation begun, 7:55 a. m.; operation completed 8:55 a. m.; anesthetic—used nitrous oxide, so-called "laughing gas", and ether to start, and then turned over to ether. A quarter of a pound of ether was used. The gall bladder and appendix were removed through a four inch incision into upper portion of right rectus, under local and gas anesthesia. It was necessary to use almost every type of anesthetic to anesthetize the patient. Appendix, adherent, post cecal, sclerotic at distal three-fourths.

Technique incision made: Gall bladder enlarged, sacculated at lower portion. Gall bladder thickened; large amount of fat subperitoneal. Liver showed moderate

(Testimony of Dr. Harry Cohn)

amount of sclerosis radiating from gall bladder. Other abdominal organs are negative.

Immediate post-operative condition: Good.

Post-operative diagnosis: Good.

Pathologist's report: Appendix walls sclerotic; distal lumen obliterated; microscopic sections show chronic exudate on the surface, and marked fibrosis of the walls.

Chronic appendicitis.

Gall bladder: Not normal size; walls not thickened. Microscopic sections show a moderate degree of fibrosis of the walls with atrophy of the mucosa. No recent inflammatory changes.

Operated April 25, drainage clips removed May 1st; wound healing; general condition good; satisfactory convalescence.

Physical examination April 24, 1927. Temperature, 98.4; Pulse 88. Respiration 20. Patient admitted to hospital; assigned to room. Patient up and around.

Monday, April 25, day of operation. 6:20 A. M. Temperature, 98; Pulse, 84.

6:30 A. M. M. S. grain, 1/6; scopolamine (morphine) 1/200 grain.

7:30 A. M. Removed to surgery.

9:15 A. M. Returned from surgery. Pulse 88.

9:30 A. M. Proctoctysis

10:30 A. M. M. S. grain, 1/6 (H); Pulse 80; sleeping.

12:00 Noon Sleeping.

1:00 P. M. Patient turned to right side.

(Testimony of Dr. Harry Cohn)

1:10 P. M. Vomited (about oz.)

1:30 P. M. Lips greenish cast.

2:40 P. M. Sleeping.

3:00 P. M. Vomited.

4:00 P. M. Temperature, 98; Pulse, 88.8; Respiration, 22; vomited. Sodium bicarbonate administered.

4:20 P. M. Vomited. Patient turned to left side.

Tuesday, April 26, 1927: Sleeping.

11:30 A. M. Visited by attending physician.

3:30 P. M. Complains of difficult breathing and pain in right shoulder.

3:45 P. M. Hot sodium bicarbonate administered.

April 30, 1927—8:00 A. M. Dressing changed by attending physician; drainage and four sutures removed.

4:00 P. M. Temperature, 99; Pulse, 92.

6:00 P. M. Discharged from the hospital upon the representation of plaintiff that she felt well enough to go home. Physician notes—plaintiff had made a very satisfactory recovery.

February 13, 1931. X-ray report of the heart. Findings: Diameter of the chest 31 cm.

Greatest transverse diameter of heart—14 cm.

Transverse diameter of aortic arch—6 cm.

The heart outline suggests possibly a slight left ventricle enlargement, but the heart measurements are well within

(Testimony of Dr. Harry Cohn)

the normal limits. Bony framework negative. Diaphragms rather high in the middle portion of each. Heart and great blood vessel shadow within normal limit as to shape, size and position for this type of chest. The hilus shadows are somewhat enlarged and thickened showing several isolated caseous or calcified nodules. There is a very slight degree of fibrotic mottling extending out into the upper lobes, being heaviest with a slight degree of beading in the right upper. There is possibly a slight degree of peribronchial thickening toward the apex, being heaviest in the right.

February 17, 1931. Special tuberculosis examination: "Opinion—The undersigned Board of three medical officers have carefully reviewed the file of the above captioned. In accordance with the provisions of Regulation 215, it is our opinion that:

- "1. The claimant has suffered active tuberculosis.
- "2. Tuberculosis has reached complete arrest.
- "3. Tuberculosis was completely arrested 10-31-23".

March 26, 1931. X-ray Report. The greatest transverse diameter of the heart is 13-1/2 centimeters. Transverse diameter of the costo-sternal articulation 6 centimeters. Transverse diameter of the chest is 29 centimeters.

Conclusion: "The diameter of this heart is within normal limits".

(Testimony of Dr. Harry Cohn)

After the above excerpts from defendant's Exhibit H for identification, consisting of reports of physical examination made by Government physicians from 1919 to and including 1931, together with the report of physical examination made on April 24, 1927, by a private physician showing findings made and the progress of plaintiff's recovery, after her operation for the removal of the appendix and gall bladder in 1927, the witness was propounded a question on cross examination as follows:

BY MR. FOOKS:

Now, assuming those facts, together with the other facts given you, would that change your opinion that Miss Hill had a condition of the lungs and heart on February 3, 1919, which was then incurable and which would not respond to treatment, nor could not be alleviated from its then condition?

THE WITNESS: No, it does not change my opinion.

Q It does not change your opinion?

THE WITNESS: No, sir.

REDIRECT EXAMINATION

Concerning Mr. Fooks asking me about the work Miss Hill did, and what effect in my opinion the work in the Indian School had on her tubercular condition, well, the work in the Indian School would simply aggravate her condition. The Veterans Bureau gave her a certificate that she was completely arrested just before she took the job at the Indian School, and they gave her the job at the Indian School based on the Veteran's certificate that she was arrested.

(Testimony of Dr. Harry Cohn)

At this stage the following proceeding took place:

THE COURT: Just a minute. Are you omitting the fact that the doctor who testified to giving her that job said he relied both upon the certificate issued by the Veterans Bureau and his own examination? Is not that what he testified?

The point is: I am calling attention to the fact, as you put it to the doctor, that you have omitted the circumstances that the doctor who accepted this certificate from the Veterans Bureau was also the same doctor who reported he had examined her before he gave her employment.

MR. GERLACK: Yes, I think so. And on cross examination he testified that he had relied largely upon that certificate.

Q. Dr. Cohn, you will recall the evidence of Dr. Duncan and also Dr. Wheeler—Dr. Wheeler in the Indian Sanatorium, and Dr. Duncan at the Indian School—that both of them found active tuberculosis while she was working in that Government service. What effect did the work she did—in your opinion, what effect did the work that she did do in the Indian School and also the Indian Sanatorium have on her tuberculosis in regard to making it break out and become active again?

MR. FOOKS: I object to the question upon the ground that I have a notation taken by the Government's own witness to the effect that they found enough evidence to believe she had tuberculosis. That is as far as the doctor would go. That is exactly the way the doctor answered the question. He called it "a tentative working diagnosis." He was asked if he ever made an examina-

(Testimony of Dr. Harry Cohn)

tion which would convince him that he could give a positive diagnosis, but he found evidence to the effect that he believed she had tuberculosis. That is as far as he would go.

BY MR. GERLACK: Q. I will amend my question, accepting counsel's version of that.

A. It only proves this: that her work apparently re-activated her tuberculosis.

If a person has a case of arrested tuberculosis, they would not be showing symptoms of tuberculosis. The word "arrested" implies that the patient is symptom free—that means that they have no symptoms. Concerning the symptoms of active tuberculosis that the patient himself would feel, in the first place, I will just give them now briefly—the undue sense of fatigue. In other words a man on the job may find himself tiring more easily than ordinarily; he may cough; he may expectorate; he may have pains in his chest; and of course he may occasionally spit blood. Those are the chief symptoms which the patient himself appreciates. About 40 per cent of the patients spit blood in tuberculosis. Mr. Fooks asked me if it were possible to arrest tuberculosis in the beginning stage, and I believe I said it was. That is true only in 90 per cent of the cases. The other ten per cent ordinarily advance into the moderately advanced or far advanced classification, and become chronic types of tuberculosis or succumb. If Miss Hill had attained a case of arrested tuberculosis—if the word "arrested" is used,—she must be symptom-free. Then the presence of any symptoms attributed to tuberculosis indicates she is not arrested. If Miss Hill had a cough or recurrent cold, if properly at-

(Testimony of Dr. Harry Cohn)

tributed to tuberculosis, it would indicate she was not arrested. Tuberculosis is, generally speaking, a progressive disease, and the stages are incipient, which means the beginning, and sometimes spoken of as minimal; and then goes on to the moderately advanced; and from moderately advanced it goes on to far advanced; and from far advanced it goes on to a terminal case or death. It never goes backward, meaning you never change the classification of moderately advanced to incipient. Getting back to the gall bladder operation that counsel read to me, there is nothing in that record of that operation that counsel read to me, that is remarkable from a medical standpoint—just an ordinary report on an ordinary successful operation. Fibroid type of tuberculosis means that there was destruction of lung tissue itself and replacement by scar tissue. The fact that there was considerable scar tissue and considerable destruction of lungs by the progress of the tuberculosis, would not have any significance in connection with using an extra amount or different kinds of anaesthesia to put a person to sleep. There is nothing unusual about giving a person with tuberculosis a general anaesthetic—it is done daily. It is done in far advanced cases. It is done to some extent for a pleura-plastic operation, although the use of local anaesthetic is gaining in vogue, in favor.

RE-CROSS EXAMINATION

Tuberculosis is a serious disease. So, I just stated before on cross examination I always take a history of a patient as a general procedure. Taking the history of a patient, if they related to me they had night sweats, loss of appetite, loss of weight, felt feverish and in the after-

(Testimony of Dr. Harry Cohn)

noon, they didn't sleep well, and all of the other different symptoms that usually accompany the disease of tuberculosis, without going further, I wouldn't diagnose tuberculosis on the symptoms alone—no, I wouldn't diagnose it. Supposing they were coming to the hospital for treatment, and without the diagnosis for tuberculosis—I would examine them before I would give them a diagnosis. If I were the physician who admitted the patient to the hospital—and they have such physicians—and it was customary while I was in the Government service when they admitted a patient who came there to be treated for tuberculosis, sent by some officer of the Veterans Bureau, to send them first to the Out-Patient Service, or to some physician who may admit them, as a rule they were sent there by the Veterans Bureau, some officer, and they were usually sent there for the purpose of hospitalization, we had a great many patients in the hospital at Camp Kearny while I was in charge, ordinarily around five hundred,—before I would hospitalize that man I would give him a thorough examination; we placed them all in the receiving ward and kept them in the receiving ward until the examinations were completed except in emergency cases. I ordinarily took a week. If they related symptoms of tuberculosis and I could not find definite evidence of tuberculosis I did not discharge him right away but kept him there for observation. I did not give him the benefit of the doubt. We tried to find out what was causing the symptoms.

It wasn't a question of doubt. A man might come in with these symptoms, and it might be due entirely to a different type of infection. If the diagnostic procedures

(Testimony of Dr. Harry Cohn)

were all negative, if I did not find in the receiving ward definite evidence of tuberculosis from such examinations as they made, but they did show some signs of it—and there were subjective symptoms that they gave me, and it was evident that they had tuberculosis—I did not keep them there longer for further observation. A man comes into a hospital and gives a variety of symptoms such as would lead one to believe he had tuberculosis. If our sputum examinations, our tuberculin tests, our X-ray tests are negative, we say the man has no tuberculosis. After all, a man may have some motive. All those tests were given in the receiving wards excepting in emergency, because he might come in with some infectuous disease other than tuberculosis. He might have had smallpox in the incubation period. He might have had flu, diphtheria, so we kept him in isolation on the receiving ward until the diagnosis was made, excepting a man who was acutely ill. As to whether we did not have definite regulations to follow that we could not at that time discharge a man where we believed, or had any reason to believe, that he still had tuberculosis, we could discharge a patient who had tuberculosis on their request; and we could discharge patients without their request, as far as I recall, it was not a penal institution. As to whether if we had any reason to believe that they had tuberculosis it is a fact that we had to keep them there until we could definitely diagnose that they did not have tuberculosis, or that it was arrested, we kept them there until they requested their discharge; that is correct. So, in that way we gave them the benefit of the doubt, that is, to that extent.

Over a period of 17 or 18 years, I have probably examined one hundred thousand cases of tuberculosis, and

(Testimony of Dr. Harry Cohn)

as a professional man I would hesitate a long while before attempting to make a definite diagnosis of any particular individual of tuberculosis 16 years ago, without some record of an examination showing tuberculosis at that time.

I would permit a patient of mine, other than under extreme emergency, to be given a quarter of a pound of ether, who was suffering from active moderately advanced tuberculosis—we do it quite frequently. They stand anesthetics very well. That is good medical practice. Of course the danger with the tubercular patient, like it is with the otherwise healthy man, is due to the chance of developing pneumonia, but the tubercular patient is in no more danger of developing pneumonia after an ether operation, than is a so-called healthy man. As to whether I would permit unless it was under an extreme urgency a patient of mine who had a myocarditis and an aortitis in such degree that they never would get better—incurable, plus a moderately advanced active tuberculosis, to be given a quarter of a pound of ether and other anaesthetics—I would after a proper consultation. That is a subject for the anesthetist to decide. If the anesthetist feels it is safe and the surgeon feels it is safe, I see no valid objection to it after proper protection of the patient. After all, ether is a heart stimulant, not a heart depressant. I would answer this same question from my own personal knowledge of institutional practice that that would also be good medical practice. That has been done and is being done.

I mean that after all there is no objection to giving a patient with tuberculosis an ether anaesthetic; nor is there

(Testimony of Dr. Harry Cohn)

any particular objection to giving a patient with myocarditis, provided at the time the heart is fairly well compensated, because ether is a heart stimulant. Concerning some serious condition that presents itself in the case a patient suffering from myocarditis and aortitis, including an enlargement of the heart, suffering also from moderately advanced active tuberculosis, and whether a patient suffering from those conditions is any different, so far as having administered to such a patient a general anaesthetic—than a normally healthy patient, there is no difference, provided this: That the blood pressure is within fairly normal limits, and that there is no evidence of serious kidney damage.

I mean this: That after all, the patient who goes into a hospital for gall bladder operation has been under observation for considerable time before she goes into a hospital. Ordinarily, they are. They are carefully examined; the urine is examined; the blood is examined; there may be chemical examination of the blood. The heart, of course, is examined, and the patient may have an active tuberculosis. Ordinarily they don't take cases in the hospital with such active tuberculosis, except in the case of an operation, and an examination is made. If the surgeon is satisfied the patient is a good surgical risk, the operation is done, even though in the presence of heart disease, aortitis and lung tuberculosis.

If, on the other hand, other conditions are present which are the result of these, then the operator may use a local anaesthetic. That depends, of course, upon the surgeon and the anaesthetist. Some give a preference to local anaesthetics, and some use general. At the present time

(Testimony of Dr. Harry Cohn)

the tendency is giving local anesthetics more than the general.

At this stage of the trial, the following proceedings took place:

THE COURT: What I am trying to get clear, Doctor, is: I gathered in the early part of your testimony that this patient by 1919 was suffering from a serious heart condition and from a serious tuberculosis condition. Now, here in the spring of 1927 she is being subjected to something other than just a minor, trivial operation. Is that not right?

THE WITNESS: Yes, that is a major operation.

THE COURT: Do you not call that a major operation?

THE WITNESS: That is a major operation.

THE COURT: So that is something serious?

THE WITNESS: Yes.

THE COURT: Now, does the Doctor draw any preliminary distinction as to the preliminary examination that he will make in determining whether such an operation will be performed, and if so, under a general anesthetic, when he has a normal, healthy patient as distinguished from the patient who is suffering from a serious heart condition and an advanced or moderately advanced pulmonary tuberculosis?

THE WITNESS: Yes. He does ordinarily make a distinction.

THE COURT: So, now, then, that is because you have an abnormal condition as distinguished from what confronts the doctor when he has a healthy patient?

(Testimony of Dr. Harry Cohn)

THE WITNESS: Yes, sir.

THE COURT: That is true, is it not?

THE WITNESS: Yes, Your Honor; yes, Your Honor.

THE COURT: Now, did you see anything extraordinary about the facts that are stated, apparently in one of these depositions, that this lady is operated on the morning of April 26th, and the doctor authorized her discharge from the hospital on the afternoon of April 30th?

THE WITNESS: Yes, she went home extremely early; but I don't know what her after-care was when she left the hospital. Perhaps she was receiving the same type of care she would have in the hospital. I am not able to answer that question. Of course, it is early to discharge patients from a hospital, and the reason for that has been given.

THE COURT: What I have in mind is, nursing is ordinarily regarded as strenuous work.

THE WITNESS: Yes, it is hard work.

THE COURT: And it is the kind that is both nerve-exhausting and physically exhausting?

THE WITNESS: Yes; the general run of nursing is that type, Your Honor.

THE COURT: Am I correct that one of the reports that was read to you this afternoon indicated that this lady was admitted to the hospital at Fort Bayard in August of 1920—the Government hospital—and was discharged from that same hospital in October of 1920, the report disclosing findings to the effect that this lady was an arrested case and in fit physical condition to take up vocational training?

(Testimony of Dr. Harry Cohn)

THE WITNESS: That was the statement made in October, I believe. I think she went into the hospital in April.

MR. FOOKS: August.

THE WITNESS (Continuing) August. She went in the hospital in August; went out in October, which is, of course, a short period of time and does not fit the requirement for an arrested diagnosis.

THE COURT: Well, then, you would interpret those findings as disclosing either one of two things: either that the doctors were in error; or that, if they were right, then at that time this lady was not suffering from either serious tubercular condition, nor a serious heart condition.

THE WITNESS: Well, it is very difficult because she was sent in with a diagnosis of active tuberculosis.

THE COURT: Was it not a suspicion?

THE WITNESS: Well, the fact that she was kept there—I don't know the details excepting what is on the records.

THE COURT: Did the records indicate anything more than a mere suspicion?

THE WITNESS: May I see that record, please?

MR. FOOKS: Yes.

(The records referred to were passed to the witness.)

MR. GERLACK: August 16, 1920, by Dr. Tappan.

THE WITNESS (Examining records) Diagnosis was made of chronic pulmonary tuberculosis by Dr. Tappan when she was sent to the hospital.

(Testimony of Dr. Harry Cohn)

BY MR. FOOKS:

Q. But, may I interrupt? If you read the doctor's remarks there—I think that is what the Court has in mind.

A. (Reading): "After careful consideration of all physical findings in this case, the writer feels that diagnosis of tuberculosis should have been given previously."

THE COURT: Now, does that indicate any findings based upon a single session with the patient?

THE WITNESS: Apparently so, your Honor.

THE COURT: Now, the medical report that was made at the Fort Bayard Hospital in October was a report following something like two months of observation of the patient.

THE WITNESS: She was admitted there in August, I believe.

MR. FOOKS: August 22nd.

THE COURT: Then, do you find the report upon her discharge?

THE WITNESS: I think it is right here, your Honor (indicating).

THE COURT: Does that indicate the date?

THE WITNESS: No. This says, "Left Fort Bayard 10/21/20; now in El Paso."

BY MR. FOOKS:

Q. The report was made on October 22. She left on the 21st.

A. Yes.

THE COURT: In other words, after two months' observation at the Fort Bayard Hospital the doctors there made findings to the effect that they couldn't find any active tuberculosis.

(Testimony of Dr. Harry Cohn)

THE WITNESS: Their diagnosis here, your Honor, says:

“Under observation for tuberculosis, pulmonary, chronic.” Then,

“Pleurisy, chronic, fibrinous both bases.” They advise hospital care.

This (indicating) is the hospital report, is it not?

BY MR. FOOKS:

Q. Yes, that is right.

A. Fort Bayard.

Q. I think I have a more complete record in the clinical record here (examining records).

THE COURT: What I am getting at is this, Doctor: As to whether you find anything in the report made at the time this lady was discharged from the Government hospital at Fort Bayard to indicate that the doctors at that time found any active tuberculosis?

THE WITNESS: Apparently they still had her under observation because, “Do you advise hospital care?” They still say “Yes”.

BY MR. FOOKS:

Q. This is a more complete report (indicating). This is the entire clinical record of that hospital.

A. Which is the last one?

THE COURT: When you find the last chart, Doctor, tell us the date thereon.

THE WITNESS: (Examining charts) It must have been October 21, 1920. This was the report, “Examined by board”.

MR. FOOKS: Speak a little louder.

(Testimony of Dr. Harry Cohn)

THE COURT: Will you tell us what the findings were?

THE WITNESS: It just says: "No tubercular activity; request patient discharged." There were no findings. There is no board report in here; just their statement.

BY MR. FOOKS:

Q. Suppose you look at the charts.

A. (Examining charts) A board examination was requested, and that is the statement of the doctor. The detailed report of the board is not in the record.

Q. May I help you?

A. (Examining documents) I don't find the board report.

Q. Well, as I see it, the doctor will agree with me that from those medical reports the patient went on a furlough from the hospital, as the report indicates, and on the 21st there is a notation on that report to the effect that she was in El Paso and had not returned. Now, as the doctor has just stated, there is a request there for a board examination. It does not show that it was given, except that the only thing is that the board noted on there that during a period of observation—

A. (Interrupting) Yes, it says "Examined by board".

Q. (Continuing) —"Examined by board; no tubercular activity".

A. (Reading) "Request for discharge for vocational training approved".

Q. The findings are included in the clinical records, the daily reports.

A. I mean, the board's report is not there. She was examined by the board. There should be a report by the

(Testimony of Dr. Harry Cohn)

board in the record. It should be signed by a member of the board.

THE COURT: Well, in any event, Doctor, the findings or wind-up of the conclusions on the part of some board there at this hospital were to the effect that they found no activity so far as tuberculosis was concerned?

THE WITNESS: That was their conclusion; yes, your Honor.

BY MR. FOOKS: Q. And there is an examination made on the 23rd of August. Of course, I don't know if that was made by a board.

A. It is not, no. It was made by Dr. Beatty.

THE COURT: Would it be correct to say in brief, doctor, that you feel that at the time these various findings were made and various reports that have been read to you that the doctors making them were mistaken?

THE WITNESS: I would say that they were mistaken in their conclusions and in their classification, not in their findings.

THE COURT: Well, do you mean the same findings that these doctors reported you interpreted differently?

THE WITNESS: Yes, I wouldn't call a case arrested that I had under observation for two months, because I must have that patient under observation for six months under that classification.

THE COURT: Well, I am not referring particularly to this report when she was turned loose from the hospital at Fort Bayard and authorized to take up vocational training, but I have in mind the various reports that have been read here covering the period from December, 1919, to some date in 1926. In none of the findings is there

(Testimony of Dr. Harry Cohn)

anything to the effect that anybody found any heart trouble?

THE WITNESS: No, no. There is nothing definite in any of those records of '26.

THE COURT: And outside of this belief in 1919, which led to sending the plaintiff to the Fort Bayard Hospital, do you find anything in any of these reports to the effect that any doctor found present any activity so far as tuberculosis was concerned?

THE WITNESS: Yes, there was Dr. Tappan's statement there.

THE COURT: That was in 1919, was it not?

THE WITNESS: Yes.

THE COURT: I say, outside of that incident which led to her being sent to Fort Bayard from which, however, she was discharged in October—outside of that one instance, do you find anything in those reports to the effect that any doctor found tubercular activity?

THE WITNESS: Well, I would have to look at some of them again because I recall some of them had rales and findings which would indicate that finding; but I believe not—

THE COURT: (Interrupting) Well, wherever they found or hear rales, did they not indicate they were unable to find anything to confirm the presence of active tuberculosis?

THE WITNESS: Yes. They carried the diagnosis of arrested right through, excepting Dr. Holmes.

(Testimony of Dr. Harry Cohn)

BY MR. FOOKS:

Q. Dr. Holmes?

A. Yes.

Q. He didn't find anything.

A. He found it, but he said he found nothing.

Q. At least, he said he found nothing?

A. Yes, sir.

Q. Well, referring just a moment, Doctor, to that particular examination that the Court has been interrogating you on—that is, Dr. Tappan—you read the remarks and conclusions, but you did not read the physical findings, and I think you will notice that he said that the X-ray did not confirm markings were not typically tuberculous. That is correct, is it not?

A. Yes. This (indicating) is the same X-ray report, though.

Q. Yes. So, you would not say that he made a definite diagnosis on that finding of active tuberculosis, but merely gave her the benefit of the doubt?

A. Well, I believe he placed himself in writing in that Fort Bayard record. May I see it again?

Q. Surely. He is not in this record, is he?

A. Yes, he wrote a letter in that report there. There is a letter in here (indicating).

Q. Yes, there is a copy of that same report in here.

A. No, there was a letter he sent (Examining documents): Oh, yes, this is it.

There is a letter under date of August 18, 1920, in which Dr. Tappan says:

“I feel sure that an injustice has been done Miss Hill in not giving her a diagnosis of tuberculosis before this time.”

(Testimony of Dr. Harry Cohn)

Q. However, he still bases his conclusion on the fact he still said the X-ray reports were not marked typically tuberculous?

A. He did not. The X-ray man said that. I think this was Dr. Cathcart's interpretation, not Dr. Tappan's.

THE COURT: Well, apparently in reliance on the insistence of this Dr. Tappan, she was admitted into this hospital at Fort Bayard, and after being under observation for two months they could not find anything to confirm the view that Dr. Tappan had. Is that the effect of it?

THE WITNESS: I believe so, your Honor. I am sure that is the effect of it.

BY MR. FOOKS:

Q. Now, reading from this X-ray again—the physical findings of Dr. Tappan:

“X-ray report made by Dr. J. W. Cathcart under date of June 29, 1920, is as follows:

“Lungs: Hilus shadows rather heavy and contain large number calcified glands. Apparently some scar tissue scattered throughout right side.”

In other words, as I gather this, the Doctor here is interpreting in connection with his physical findings the X-ray plate of Dr. Cathcart, and his conclusions are:

“Markings not typically tuberculous”. That is the conclusion of Dr. Tappan?

A. Yes sir.

Q. And the X-ray report, as I understand it, Doctor, is very important in deciding whether or not a person may have active tuberculosis, as you testified?

A. That is right.

(Testimony of Dr. Harry Cohn)

Q. Doctor, Mr. Gerlack examined you to some extent on Dr. Wheeler. Do you recall the findings he made?

A. Yes, sir.

Q. There was some controversy about whether or not he made an active tuberculosis examination or diagnosis, or whether he depended on some other physician. The Doctor says:

“The only direct proof of tuberculosis is the finding of the tubercle bacillus in the sputum. All of the rest of the evidence is circumstantial and you have to have sufficient weight to establish in your mind a preponderance in favor of tuberculosis; as there are cases occasionally in which you will be wrong.”

There are cases in which a doctor would be wrong if he bases his diagnosis solely on symptoms. I believe you testified, Doctor, that you may have tuberculosis and yet your sputum may be negative?

A. Correct.

REDIRECT EXAMINATION

There is very much more known of tuberculosis now than was known to the medical profession in 1919 or 1920 both as to cause and particularly much more knowledge as to the treatment of tuberculosis. Concerning whether it is easy or hard to find active tuberculosis in a chest, the chronic fibroid type as I testified Miss Hill has—well, the chronic fibroid infections are the ones that usually give the trouble. You have more trouble in diagnosing that type of tuberculosis than what you would call the exudative type. The exudative type is more simple to diagnose. A valvular heart can be present without murmur being heard, but sometimes the murmur is only heard under cer-

(Testimony of Dr. Harry Cohn)

tain conditions. The fact that a person is examined and a murmur not heard does not mean conclusively that a murmur can not be present. Not at all. If Dr. McGill testified in his deposition: "We made a physical examination and the findings were rales of upper lobes of the lungs, a large heart with mitral regurgitation, otherwise known as mitral insufficiency, which to an average man is a large and leaky heart" If she had that condition which Dr. McGill testified was found not only by himself but Dr. Kirby, concurred in by the other doctors in that hospital when her case was discussed by the staff—if she had mitral insufficiency and mitral regurgitation, well she still has it today and will always have it.

Concerning the connection, if any, blue lips would have in connection with either tuberculosis or the heart condition—ordinarily it would have nothing to do with tuberculosis, but it would have—it would indicate that the tissues are not receiving enough oxygen. In other words, the heart is not pumping sufficiently. You may find blue lips in the sort of condition Dr. McGill found. After all, the tendency is for a loss of weight in tuberculosis—that would be more typical of tuberculosis.

RECROSS EXAMINATION

The following question was propounded and the witness made the following answer thereto:

BY MR. FOOKS:

Q I invite your attention to one of Dr. McGill's answers to a question concerning a mitral murmur he found in 1919 and which existed in 1921 and 1936 was so pronounced "even a novice could hear it. It has always been so bad that it would not take a heart specialist to detect it?"

(Testimony of Dr. Charles O. Young)

Now, if you made an examination of that patient over a period of 16 years 28 times, you would naturally expect to find a heart condition, would you not?

A Yes, sir.

DR. CHARLES O. YOUNG

called as a witness on behalf of the plaintiff, having first been duly sworn testified as follows: I am a physician and surgeon licensed to practice in California, Illinois and Massachusetts; that I graduated at the Harvard University Medical School, Boston, Mass., in the class of 1893, and have continued to practice my profession since graduation; I have taken post-graduate work at the University of Berlin and in Hamburg, Germany; I have specialized for the last ten years in the diagnosis and treatment of heart diseases. During my practice I have been connected with St. Anthony's Hospital in Chicago, and the Washington Park Hospital in Chicago; I have practiced my profession in Los Angeles for the past nine years, and my office at the present time is located at 7th and Alvarado Streets, Los Angeles, California. On September 23, 1935, I first examined and prescribed treatment for plaintiff; my examination of plaintiff consisted of having her seated on a chair with the chest exposed, free from clothing, and I first examined the heart by using the stethoscope, placing the stethoscope over the site of the mitral valve where the sounds of the mitral valves are most heard. From my examination I detected the sound like a leakage through some aperature, known as a mitral murmur, and I listened further and found this sound was transmitted toward the left. The heart is a compound muscular pump located under the sternum, and to the left of the sternum about five

(Testimony of Dr. Charles O. Young)

inches high and three and a half inches wide and approximately two and a half inches in thickness; it is divided into four chambers—two on the right side and two on the left; these chambers are lined with a mucous membrane, the lining of which is like the inside of a persons lips; the various chambers are divided by each other, separated by valves, and these valves are one-way valves so that they prevent the blood from going back and direct the flow; the valve between the left upper and the left lower chamber in the heart is called the mitral valve, which is the valve which is very often diseased. When the mitral valve is diseased there is a frequent flow of some of the blood into the chamber from which it came, there not being a perfect closure of the valve from that chamber to the lower chamber, and that the rushing back of the blood through this partially opened valve causes the murmur; the medical term mitral regurgitation is used synonymously with mitral murmur. On percussion I found that the heart was enlarged and palpated especially toward the left; I found plaintiff's heart was weak as indicated by the blueness of plaintiff's lips and hands; the designated medical term for this blueness is called cyanosis. In my opinion if plaintiff attempted to follow the occupation of a nurse it would aggravate her condition and make it worse. Basing my opinion upon the testimony of the lay witnesses, and the findings of the doctors upon their physical examinations of plaintiff, plaintiff's heart condition was the cause and had its inception at the time when plaintiff had influenza in 1918. In my opinion assuming that early in 1919 when plaintiff was examined by Doctors Kirby and McGill she had blueness of the lips and shortness of breath, plaintiff had a damaged heart at that time from

(Testimony of Dr. Charles O. Young)

which condition there was no probability of a cure. Assuming the testimony I heard in the court room to be true, and basing my opinion upon the findings of the physicians that had examined plaintiff in 1919 until date of trial, plaintiff was suffering from a serious and incurable ailment for which rest is the prescribed treatment and which would be aggravated by work of any kind at the time of her discharge on February 3, 1919, I would classify the heart condition from which plaintiff was suffering at that time as myocarditis and mitral insufficiency.

CROSS EXAMINATION

Myocarditis and mitral regurgitation are progressive conditions, but I do not feel that plaintiff was any worse in 1935 when I examined her than she was in 1919. In a heart condition such as plaintiff had, if the person takes care of himself it does not necessarily become worse, but that overwork or any other kind of disease is likely to weaken the heart; that such a condition creates a weak point in the person's anatomy, which is likely to give way to any strain of physical exercise or disease. While rest periods would give her heart a chance to recover, a hard nursing case would give plaintiff a temporary set-back, keeping her heart condition practically what it was. In expressing my opinion that plaintiff had had an incurable heart disease since February 3, 1919, and that the disease was just as bad at that time as it was when I first saw plaintiff in 1935; I took into consideration the operation performed by Dr. E. Payne Palmer at Phoenix, Arizona, on April 24, 1927, as well as Dr. Palmer's physical examination, including the heart, prior to the operation and the administration of ether, and her rapid recovery so as to be

(Testimony of Dr. Samuel E. Welfield)

able to leave the hospital within five days. I did not accept the findings contained in the medical reports of the Government physicians who had made intermittent examinations of the plaintiff over a period of approximately eleven years including the findings made in the examination of Dr. E. Payne Palmer as being correct in arriving at my conclusion that plaintiff had had an incurable heart disease since February 3, 1919.

REDIRECT EXAMINATION

A person may have a severe valvular heart disease and upon examination the murmur may not be heard, for instance, if the person is sitting at the time of the examination there is a possibility that a murmur may not be detected, but if the person is standing or has been through exercises so as to make the heart beat more forcefully the murmur, if one exists, is usually heard.

DR. SAMUEL E. WELFIELD

called as a witness on behalf of plaintiff, having been duly sworn, testified under oath as follows:

DIRECT EXAMINATION

I am a physician and surgeon licensed to practice in this state and have been since June, 1918. I graduated from the College of Physicians and Surgeons in San Francisco. I am on the staff of Mt. Zion Hospital; have been for 14 years; Mary's Help Hospital, about eight years; and also Dante Hospital for 2 years. At the present time my offices are at 450 Sutter Street, San Francisco. My specialty is internal medicine. That includes heart and lungs, kidneys, gall bladder and liver. That is what is known as an internist. I examined Miss Hill the day before yesterday,

(Testimony of Dr. Samuel E. Welfield)

on Tuesday, over at the Board of Health Building in Dr. Cohn's office. The examination made of Miss Hill required about an hour and ten minutes. She appeared to be a woman who was well nourished, color poor; temperature was 99; her pulse was 96; respiration 20; nothing remarkable about her head; eyes reacted normally to light and distance; pupils were equal; no evidence of exophthalmos—that is, no protruding of the eyes. Exophthalmos is caused by goitre trouble. Nose, negative; mouth at the time showed good hygiene; throat, tonsils were out; larynx was inflamed and reddened; neck, palpable thyroid; no other glands palpable. At the lower border of the neck there was a scar about four inches long; chest: the chest was well clothed, and the contour normal; both lymphatic glands were apparently equal; on auscultation, increased resonance left upper lobe, slightly increased on the right lower base; on the left side showed evidence of crepitation, or friction rub, I should say. That evidently is due to a pleurisy. The left side of the base was negative to auscultation. Percussion: Decreased resonance; left upper lobe slightly decreased on the right side, and decreased both bases; more marked on the left side.

Auscultation means you listen to the chest with a stethoscope and you place the stethoscope in the upper part of the lungs—different parts of the lungs on each side—and compare them. Then, you go down to the base of the lungs and compare the sounds heard on both sides. The tactile fremitus, which is the spoken voice sounds that you can hear by putting your hand on the chest when you talk, and you get a little sound through the chest wall which acts as a sort of a sounding board—the vocal fremitus

(Testimony of Dr. Samuel E. Welfield)

was decreased on the left side upper lobe and decreased on both bases.

Her heart: The apex beat was in the fifth left inter-space about three to three and a half inches from the costal margin, or the middle of the chest. Upon auscultation, listening to the heart with a stethoscope, there was a marked mitral murmur heard with evidence of mitral regurgitation.

The abdomen showed a scar about four to five inches long in the rectus (right) region. No other masses or tumors were palpable. "Palpable"—that means that you can feel them. Hips: Hip joints, normal in function; no evidence of crepitation on flexion and extension of the knee. That means cracking sound; grating sound of the knee on movement.

Left knee: Moderate amount of crepitation. Her blood pressure was 152/88. Reflexes were normal. Diagnosis: Chronic laryngitis; chronic pulmonary tuberculosis. The patient was fluoroscoped. The fluoroscope showed no evidence of activation; both sides showed calcified glands with some evidence of scarring that could be seen, or fibrosis, through the X-ray shackle. The picture there is marks of shadows which evidently were due to fibrotic changes; scar tissue replacement. The scar tissue in the lungs—well, that is usually the healing process of lesions. In this case it is lesions—tuberculosis.

The aorta was tremendously enlarged. I took a ruler and measured the aorta and its transverse diameter, and it was well over four inches, which would be approximately ten and a half centimeters.

(Testimony of Dr. Samuel E. Welfield)

The mitral heart, or the left lower border of the heart, was away over to the left side and beating quite rapidly. The beat was quite rapid. It is possible in the fluoroscope to see the heart beat. You can see the heart contract and relax and contract under the fluoroscope. The fluoroscope is where they place the patient between the X-ray tube and the examiner, and you can see the shadows reflected on the screen, the same as you do on a moving picture. Now the diagnosis: Chronic laryngitis. That is, the larynx and the voice box and the tissue in that voice box is inflamed, which produces a huskiness or raspiness of the voice when a patient speaks. Chronic pulmonary tuberculosis, apparently quiescent at this time; chronic aortitis, chronic myocarditis, mitral regurgitation. Evidently the crepitation in the knees is due to a mild aortitis. As to what causes aortitis—usually any infectious disease will precipitate the incipency of aortitis. Tuberculosis would cause aortitis. (The doctor then stepped to the blackboard and drew a diagram illustrating the various valves of the heart, and the aeration of the blood from the heart to the lungs.)

This is purely diagrammatic. The heart is divided into four chambers. The heart comes in here (illustrating), and the lower part of the heart carries the blue blood into the right aorta; right auricle (illustrating); left auricle (illustrating); the right ventricle (illustrating); the left ventricle (illustrating). Now, the blood comes from the systemic portion of the heart and carries the blue blood into the right auricle here (indicating) and it passes into the right ventricle. That is the tricuspid valve, the one I just referred to.

(Testimony of Dr. Samuel E. Welfield)

Now, just for diagrammatic purposes, I will place the opening here (illustrating). The blood comes around through the pulmonary artery, and it is the only artery in the body that carries the blue blood. The blue blood is carried by veins through the body and comes back through veins. This is the only condition in the body where that condition is reversed: The blood comes around then through the pulmonary artery, and here we have lung tissues. So it goes into all the areas of both lungs and there it is carried back through the pulmonary vessel down to the left auricle, and then the left ventricle and through this valve (indicating) which is called the mitral valve.

As to what causes the blood to change from blue to red—the blue blood is carried back by veins. It is blood that has been taken up from the different parts of the body tissues that are not oxygenated. All the oxygen has been withdrawn by the tissues. So, therefore, the blood is carried back to the lungs after entering the right side of the heart, so that it is oxygenated and carried through the left side, and from here (indicating) it passes through this valve (indicating), and this is the valve that Miss Hill has affected. That is what is called the mitral valve. It is affected in this manner: The muscles contract here. (indicating) A portion of the blood passes through this valve into the left ventricle. There is the efficiency of this valve. So, the blood, after entering the left ventricle is propelled by contraction from the left ventricle, instead of all the blood being carried out through the aorta, some of it backs up into the right auricle. The pressure or contraction of the muscles, or the muscular contraction, causes this pressure. So, it finds the point of least resistance.

(Testimony of Dr. Samuel E. Welfield)

Some goes into the aorta and some backs up into this valve (indicating), which is not normal, but impaired. When that happens it affects the patient—it means the function of the left ventricle is impaired to the extent where the heart has to work that much more in order to propel blood around through the system—the systemic part of the heart. While this is going on the patient feels—in moderate rest a patient doesn't feel anything at all. In an ordinary case of mitral regurgitation, when a patient exercises or attempts to do any work, the heart is whipped up. Then this deficiency does embarrass the heart action. The patient has a dyspnea, or shortness of breath; or hyperpnea, which is difficulty in breathing—the difference between the two, when this is taking place.

I spoke of the aorta, and the diagnosis of aortitis. The relationship that has to the heart and the function of the heart—looking through the fluoroscope, you see something like this between the two lugs out here (indicating). That is just about like this (illustrating). It is dilated to the left, propelling the blood up the ascending portion of the aorta. There are three parts to the aorta: One is ascending, transverse and descending. In other words the aorta is the main valve of the artery of the heart. Then the curve takes place here (indicating) in this aorta running back here (indicating). The force of this propulsion drive is exerted on the wall of the aorta out here (illustrating).

In Miss Hill's case, this vein came over about like that. (illustrating). In other words, it appeared to be almost twice the normal dilatation. There is no danger in a case of this kind of the aorta bursting or rupturing. Of course, something like that can develop to anybody in any heart

(Testimony of Dr. Samuel E. Welfield)

condition later on in life. At the present time there is no indication of any aneurysm, which is an extreme dilatation of a wall of a blood vessel produced by a tumor-like mass which the blood is propelled through.

The causes of blueness of lips described here—Cyanosis, ordinarily known as blueness of lips, is caused by the heart not being able to pump the blood fast enough for the purpose of oxygenation. Concerning lung scarring which resulted in tuberculosis, and any effect of not aereating the blood and causing blueness—when a person has tuberculosis for a number of years with repeated active lesions during that number of years, the lesions sometimes heal and that is replaced by scar tissue, which is known as fibrosis. There is no doubt that the more fibrotic tissue that is replaced in the lung, the portion of the functional part of the lung is decreased. In other words, you have a large lung which has been replaced by non-functional tissue. Scar tissue has no function. It is merely a replacement tissue. In other words, if the tuberculosis consumes the lung and eats the lung, where the lung is destroyed it is then replaced by scar tissue. It is no longer lung.

By my last two answers I mean that where the disease of tuberculosis in the lung has progressed to recurrent attacks over a period of years, the fibrotic condition in the lungs tends to produce or to lessen—put it this way—the oxygenation of the blood, which is pictured to the layman in the form of blue lips. That does not usually take place when the disease is in its incipient stage, although I might say this: Cyanosis can be present in the incipient stage due to that area of the lung being impaired to function.

(Testimony of Dr. Samuel E. Welfield)

If it is one of the upper lobes or both lobes, it is impaired in that area in function; but the rest of the lung is normal—normally able to take up its function. Any disease of a portion of an organ, and the organ loses the function of that amount in proportion to the amount of invasion, or the degree of the disease that is present. So, that incipency—you would not have very much impairment of function excepting in that part that is affected would be moderately or severely impaired, depending upon the degree of disease that exists. For instance if you were to take a person with tuberculosis in this part of the lung and it sort of healed up and it became scar tissue, and it broke up later in this part and that became scar tissue, and then went on to another part of the lung and was active here and became scar tissue, the scar tissue would not have any ability to perform any function, and a person would have to exist with the rest of the lung that was not scarred, and also the same on the other lung.

There are two parts to the lung, one on the right side and one on the left, three lobes on the left and two on the right. If a person has lobar pneumonia, that means one of those lobes. The bronchi are the air passages that lead from the throat to the lungs and bronchial tubes. I have sat here through the testimony for the past 2 days. Assuming the testimony I have heard to be true, taking the facts I have heard as constituting the so-called history of the case, and assuming that the findings of the doctors—Dr. McGill, Dr. Sharp and Dr. Long, and these various other doctors who examined her and treated her from time to time, and also the findings of these Government doctors as manifested by these Government reports I have heard—

(Testimony of Dr. Samuel E. Welfield)

but not taking into consideration the diagnosis, or the conclusions of the doctors, in my opinion Miss Hill was suffering from chronic myocarditis, mitral regurgitation and chronic pulmonary tuberculosis at the time of her discharge, February 3, 1919.

If she had taken care of herself, meaning by that absolute rest over a period of years, in my opinion there would not have been very much change in her condition than exists today. I think that she is worse today, so far as her heart condition is concerned, than she was in 1919. As to how much worse—well, the heart disease is a progressive condition. She embarrassed that condition of that heart by attempting to work at various times, and with a very serious effect on the heart. The work that she attempted to do, required of a nurse, sometimes requires strenuous work. And any strenuous work would have a deleterious effect upon her heart, or any heart condition.

I heard her testimony to the effect that she had, what she described as, an easy job working in the hospital for the copper company, where she would lie down most of the time and answer the telephone, and about all the duties that she had for a time would be to bind up a lacerated finger or take a cinder out of the eye, and at times they would go six weeks at a time without a patient in the hospital. That was very light duty and that would not have very much effect upon her heart—that particular position. Other positions, where she was required to stand on her feet or be on her feet for any length of time, would have a deleterious effect on her heart. I think there is no doubt there was a marked aggravation of her heart condition, that the work she did since February, 1919, aggravated the condition and made her worse.

(Testimony of Dr. Samuel E. Welfield)

I have testified that I think her heart is worse now than it was in 1919, judging from the evidence here. And the work she did, in my opinion, aggravated and made it worse. All heart conditions are progressive, being progressive worse in this respect: That the pathology increases as the person grows older. The more care that that person takes of himself, the longer their expectancy. The longer a heart case—the better a heart case takes care of himself, the longer they will live. That applies to all heart conditions. It is an infallible opinion among the doctors that rest in many instances—60 per cent or more—enters into the cure of any heart disease. In the course of my practice I have patients who come to me with a condition indicating myocarditis and mitral regurgitation and I find for example, upon going into the history of that patient, that that patient has to earn a living. In treating that patient as far as I can I endeavor to get that patient to quit work for a period of time during which the patient rests. In certain cases, or in certain cases of heart disease, I find it is possible after a period of rest maybe covering many months, that under my care that patient is able to resume, say, a sedentary occupation and earn a livelihood. With an adequate period of rest that patient's heart will compensate itself to such an extent that they can resume some sedentary occupation. Exacerbations of the condition of that heart, however, although they pursue a sedentary occupation, may occur nevertheless from time to time after a number of years or a short time. When I get a patient who is 26 years old and appears to be well nourished, well developed, and examinations indicate a myocarditis, mitral regurgitation and the history discloses that that patient has been pursuing the vocation of a nurse,

(Testimony of Dr. Samuel E. Welfield)

I would ordinarily advise that patient to rest and quit all work. And, generally speaking, under ordinary conditions, after that patient had rested for several months, after a period of rest for two or more months, assuming that a patient has a heart condition uncomplicated with any other disease, that patient would go back to work and be kept under observation from time to time, and it is possible that they could continue to perform for some time that sedentary occupation, whatever it may be.

Supposing the same patient upon examination also disclosed pulmonary tuberculosis, I would require that patient to remain away from work and rest until such a time when in my opinion that tubercular condition had been arrested. Now some patients require a longer period of rest than others. It is probable that a patient who in 1919 showed the presence of pulmonary tuberculosis, a myocarditis and a mitral regurgitation, and who over a period of, say, six years has indicated from examinations reported in records of Government files, appeared to be an arrested case of tuberculosis and apparently presented no objective symptoms indicating a defective heart condition—assuming such a set of facts—that patient would be able to perform sedentary work, the continuance of which for any definite period would be very doubtful because of exacerbations of the lung condition or the heart condition. Where a case has been examined over a period of six years, with definite evidence that that patient is arrested over that period of time, as far as the tuberculosis is concerned, that would be eliminated. The heart factor, however, is something that would be indefinite. Where a person who in 1919 appeared to have pulmonary tuberculosis—active—myocarditis, mitral regurgitation, and who

(Testimony of Dr. Samuel E. Welfield)

thereafter during the period of, say, from the end of 1920 to April, 1927, when examined from time to time the findings failed to disclose either any activity as far as the tuberculosis is concerned, or any defective heart condition—during that period of time, in my opinion the patient would not be able to engage in a sedentary occupation, such as a clerical job sitting at a desk, and carry that on with reasonable regularity. She could not without deleterious effects, and it is my opinion that she would not be able to carry on any work for that period of time continually. She may attempt to but would not be able to continue doing so. It would make a difference whether she engaged in the strenuous work of nursing or in a sedentary occupation, such as sitting at a desk. In this case here there has been some testimony to the effect that this lady engaged in nursing covering on an average half of the time between 1923 and 1929, and that during that portion extending from 1924 to 1928 she averaged working more than half of the time as a nurse. If she performed her duties as called upon in those capacities, I would say that she was engaged in strenuous work. Unless she were favored I would say that the conditions under which she worked seriously aggravated whatever ailments there were with which she was affected. On the other hand, if instead of engaging in nursing she had followed a sedentary occupation, such as a clerical job at a desk, or, for example, doing clerical work in the office of the Nurses Registry, or doing clerical work in a hospital receiving department, I would say that that kind of work would materially have had a less effect upon her condition than the nursing did. I have found that there are patients suffering from myocarditis and mitral regurgitation, and who appear to be an arrested

(Testimony of Dr. Samuel E. Welfield)

case of pulmonary tuberculosis, carrying on in a sedentary occupation with reasonable regularity. In other words there are a lot of people who have to earn their living who nevertheless have some such ailment as this, but I have not yet had a patient with tuberculosis at some time complicated with a heart condition, who was ever able to carry on any occupation—sedentary or otherwise—continually for any length of time. When I say any length of time—it might be three months; a period of rest, and then again three months; and one month, and a period of rest; or six months, or a period of rest, or a year of continuous work. From the testimony here and the facts in this case that I have heard here, in my opinion the beginning stage or incipency of her tuberculosis was following her acute infection in 1918 of Spanish influenza and bronchial pneumonia. I am bearing in mind the testimony of Dr. Wolfsohn. I know Dr. Wolfsohn personally very well.

Her heart condition was in the incipency or beginning stage—it is my opinion that her valvular trouble began at the same time due to the infection of Spanish flu. I have an opinion as to whether or not her heart condition had progressed to the point where it was considered of a severe degree at the time of her discharge from the Army on February 3, 1919. My opinion is that it had progressed to a rather severe degree. Miss Hill appears to be fairly well nourished and these Government reports, these other reports and the depositions show her to be sort of fairly well nourished. This has no significance in connection with tuberculosis, excepting that if a person is underweight it is one of the symptoms. If they are of normal weight

(Testimony of Dr. Samuel E. Welfield)

or are over normal weight, it has no significance if other symptoms are present. All tubercular patients are not underweight. I think as many are above normal weight as are underweight. The production of the bacilli does not produce a toxic condition where the metabolism of the body will be affected. In other words, the tearing down, the breaking up of food and absorption of food is not materially affected, and the patient is able to maintain a fair degree of weight. There is no medicine to cure tuberculosis—the only chance is to give them good food and nourish the body, food and rest; sunshine and air.

Concerning His Honor asking me about Miss Hill sitting at a desk in a hospital or receiving ward, for instance, in a sedentary occupation, and concerning whether the mental worry and mental activity in connection with such an occupation have any tendency to increase the pulse rate, for instance, or aggravate either the heart or tubercular condition—mental work uses up sometimes as much reserve force of the heart as physical work. On the other hand there are other kinds of mental work that do not do that at all. These Government reports show that these doctors did not find objective findings of tuberculosis. Their diagnosis we will say, at times was arrested tuberculosis. If, during that period and while trying to carry on an occupation of nurse nursing patients, Miss Hill had recurring colds, was coughing and felt tired and exhausted, and on several of the jobs, as she described on the stand here, she felt so tired she could not get out of bed in the morning—under those conditions she could not obtain arrestment of tuberculosis. In other words, if her tuberculosis had been arrested she would not show those symptoms.

(Testimony of Dr. Samuel E. Welfield)

CROSS EXAMINATION

My specialty is internal medicine. That is what is known as the field of *dignostician*—some internists specialize in diagnosis only. Others specialize in internal medicine, which means diagnosis and treatment. I am in the latter class—diagnosis and treatment. I do not perform all of my surgical operations. If I have a surgical case that comes to me I diagnose the case. I have the X-rays made, if necessary, and all of the other necessary tests I feel are required, and I get my reports from the different laboratories and technicians, I review their reports, I come to a conclusion as to what is the matter with my patient, and then if it is necessary to have a surgical operation performed I refer them to some surgeon. If a patient came to me in 1927 complaining of distress in her stomach, abdomen, side, and I made an examination of this patient—I had blood tests made, had an X-ray made of the stomach and bowels, fluoroscoped the patient, and made the usual physical examination with the stethoscope, percussion and auscultation—and then this patient, in addition to that, had told me that she had been troubled with a cough, and to be more definite in arriving at my conclusions I made an X-ray, or had an X-ray made, of the chest and reviewed that—if I found that patient suffering from a severe heart, an enlarged heart, mitral regurgitation, mitral insufficiency, myocarditis and aortitis and moderately advanced active tuberculosis, I would have recommend to that patient that she be operated on by a surgeon and that a general anesthetic be administered, and I would have made exceptions to that—in most heart cases that are examined for purpose of an operation, we

(Testimony of Dr. Samuel E. Welfield)

do advise them that they are a fair risk for a surgical operation, providing that the kidneys—or, put it this way—that there is no evidence of marked arteriosclerosis present. Those two things are the prime associated factors if a person's heart is impaired to find out if they are fit risk for an operation. And we do have and have advised operations in those cases where it is necessary.

Suppose that person had a severe incurable mitral regurgitation and myocarditis and aortitis to such an extent that she could not do any work whatever, not even engage in a sedentary occupation except that it would bring on exacerbations, or, at least, would further damage the heart for a period of eight years—I would still say that in urgency an operation would be advisable meaning the operation must be performed right now, urgency, not emergency, urgency, meaning it was necessary, meaning the operation must be performed right now.

Regarding the question of whether I would advise the administration of nitrous oxide, one-quarter of a pound, if necessary—not necessarily if I would advise those things, but if I would advise in the general administration of anesthetic the use of any sort of anesthetic that was necessary, and as much of it as was necessary to operate on that patient in that condition—we usually leave the choice of anesthetic to the operator. But, if I would be requested to express an opinion, I would say, “Yes, give as little ether as possible, as much nitrous oxide as you could; but cut down on the ether.” That would be my advice. I would advise that the person be given as much anesthetic, of whatever character was necessary in order to require to perform this operation. In other words, I would put a

(Testimony of Dr. Samuel E. Welfield)

patient of mine in the hospital who had had a severe heart condition such as I have described here, and who had suffered from that condition for a period of eight years, and had at that time the same condition that she had for eight years continually. I would advise that person to go in a hospital and have such an operation requiring the administration of any sort of an anesthetic—ether and everything else, with such a heart condition. I would also, if that person, combined with her heart condition, had a tubercular condition that has existed for eight years, also combined with a heart condition.

Concerning the question of whether it would be possible to have a patient coming before me suffering from any condition in which I would not advise—in other words, I advised against—the administration of a general anesthetic—I would advise against it in acute infectious diseases of the kidneys, and in arteriosclerosis in definite cavitations—that is, tuberculosis with cavitations—and in cases of acute febrile diseases. The term “tuberculosis with cavitation” means that some of the lung tissue has been eaten away. The presence of fibrosis or scar tissue indicates that some cavitation had existed, but had been replaced by fibrosis. When there is activity there must be some evidence of invasion, and the degree of constitutional symptoms will reveal that degree. In other words, when you have a moderately advanced pulmonary tuberculosis—with fibrosis—you are likely to have cavitation present at some stage; and depending upon the degree of activity at the time. It may be that at a particular time the healing process may be taking place; and at another time excavation may take place. I spoke of arteriosclerosis, I had reference to hardening of the arteries and added

(Testimony of Dr. Samuel E. Welfield)

to that was the febrile conditions and diabetes. Explaining the first point, that means acute infectuous diseases, which means tonsilitis, influenza, streptococcic infections, and anything of that type. So far as active tuberculosis is concerned that is not important at all, no. And even though cavitation is there, in a very moderate degree; in that diagnosed stage of tuberculosis moderately advanced. The cavitation would not be sufficient to interfere—would be no risk, in other words, in my opinion.

I did not come from San Francisco to Los Angeles for the specific purpose of examining Miss Hill and testifying in this case. I visit Los Angeles about every three months. I have a number of cases to see here every three months, patients that I had in San Francisco that moved here, and I usually bring my files along on the cases that I have to see; stay here a couple of days, and then return. I happened to meet Mr. Gerlack while here, and he asked me if I would testify in this case. I told him I would listen to the history the first day and if it was meritorious I would. I am in private practice; my patients in Los Angeles are private patients. I just happened to meet Mr. Gerlack in Los Angeles. I have not stayed over here for the purpose of testifying. My ticket calls for a return tonight. If it had been one more day I would have stayed over that day. I have testified in a few cases for Mr. Gerlack in San Francisco. I wouldn't say I testified "a number" of cases for him, I have testified in a few for him. Mr. Gerlack did not communicate with me before I came here. I know where Mr. Gerlack usually stops, and I happened to be at the same hotel.

I have heard all the testimony that has been brought into this case through depositions and doctors and govern-

(Testimony of Dr. Samuel E. Welfield)

ment doctors and these Governmental reports, together with Dr. E. Payne Palmer, who happens to be a private physician, not in any way connected with the government, and taking into consideration their findings over a period of about 11 years, when expressing my opinion that Miss Hill had this severe heart condition since 1919 to such an extent that any activity whatsoever—be it sedentary, sitting at a desk, or anything else—would injure and cause further progress of the disease, I disagree with some of the findings of the doctors who have examined her in those 11 years. It is a pretty long record, if you will read any to me, I'll tell you which ones I disagree with. (The file referred to was passed to the witness)

(MR. FOOKS, counsel for the Government hands to the witness a summary of the diagnoses.)

MR. FOOKS: I presume you would not consider the diagnoses, just the findings.

A. (Examining documents) Yes.

“Examination 6/7/20; Dr. W. E. Vandevere, Surgeon, United States Public Health Service, El Paso, Texas.

“Chest Examination:

“Lungs: Shape of chest—full.

“Has not lost weight.

“Chest measurements: Inspiration 38 inches, expiration 35 inches.

“Did not detect any pathological condition in chest except roughening over larger bronchi.

“Rate of respiration: 26.

“No haemoptysis.

“Heart: No valvular lesions detected.”

I disagree with that.

(Testimony of Dr. Samuel E. Welfield)

THE COURT: What is the date of that, Doctor?

THE WITNESS: That is 6/7/20.

(Continuing)

“8/4/20; Dr. Ernest B. Thompson, Surgeon, United States Public Health Service, El Paso, Texas.

“Claimant extremely well developed and nourished. Chest full and expansion good. Some slight roughening on the larger bronchi otherwise chest negative.

“Diagnosis: Bronchitis, chronic.

“Doctor’s Conclusions: Claimant able to resume former occupation as nurse and advises that she do so.”

I disagree with that.

“8/16/20; Dr. J. W. Tappan, Surgeon, United States Public Health Service, El Paso, Texas.”

MR. GERLACK (Interrupting) How many days is that after the last?

THE COURT: Now, just stop that! Anybody can add or subtract.

THE WITNESS (Continuing): “Claimant well developed and nourished; chest full and expansion good. Evidence of hyperplastic pleuritis, left base, with some post-influenza rales which may possibly be tuberculous. Fibrosis right lobe, upper, especially posteriorly. In view of report of X-ray findings, we have hesitated to give this claimant a diagnosis of tuberculosis though the present examiner feels sure that this should have been done long ago. X-ray report made by Dr. J. W. Cathcart under date of 6/29/20, is as follows: Lungs: Hilus shadows rather heavy and contain large number calcified glands. Apparently some scar tissue scattered throughout right side. Conclusions: Markings not typically tuberculous.

(Testimony of Dr. Samuel E. Welfield)

“Diagnosis: Bronchitis, chronic; tuberculosis, chronic pulmonary.”

I agree with that.

BY MR. FOOKS:

Q. You need not pass on the diagnosis, Doctor. I believe it is not proper.

A. We will leave it out. I agree with the physical findings.

Q. You disagree?

A. I agree.

(Continuing): “Claimant not able to resume former occupation as nurse. Should be in bed part of the time—able to travel; hospital care advised and was transferred to the United States Public Health Service Hospital #55, Fort Bayard, New Mexico.

“Vocational handicap major—vocational training not feasible.

“After careful consideration of all physical findings in this case writer felt that diagnosis of tuberculosis should have been given previously.”

I agree with that.

Q. You agree with all that.

Now, then how about some more, especially after she got to the hospital? Let us find out if you agree with that.

A. (Continuing): “8/22/20: Physical examination:

“Inspection: Looks well, well nourished and developed, no chest deformities, expansion appears good and equal on both sides.

“Palpation: Slight decreased tactile fremitus both lowers.

(Testimony of Dr. Samuel E. Welfield)

“Percussion: Decreased resonance above 2nd rib and 3rd dorsal spine both sides, also both bases.

“Auscultation: Increased vocal resonance above 3rd rib and 4th dorsal spine right, and above third and third dorsal spine left. Broncho-vesicular breathing above 2nd rib and 3rd dorsal spine both sides. Diminished breath sounds at both bases. No rales heard.

“Diagnosis: Pleurisy, chronic, fibrinous both bases.”

Shall I leave that out?

Q. Well, you might as well leave the diagnosis out. I am not asking you to pass your opinion on the diagnoses. I am asking you if you agree with their findings, if you still believe that according to their findings?

A. Yes, I agree with these findings, not the diagnosis.

Q. Go ahead. I want that particular hospitalization. I would like you to cover that, if you will, please.

A. (Continuing): “10/21/20; Dr. C. W. Coutant, Surgeon, United *State* Public Health Service Hospital #55, Fort Bayard, New Mexico.

“Statement:

“This is to certify that Miss Frances Hill, now a patient in this hospital is an arrested case of pulmonary tuberculosis, and physically able to accept vocational training.”

I don't agree with that.

Q. You don't agree with that. Well, I do not think it is necessary to go any further. I presume you would naturally agree with those of your opinion.

A. My basis for not agreeing with these is the variance and the incompatibility of the findings—the diagnosis, which I can't mention, I should say.

(Testimony of Dr. Samuel E. Welfield)

(Witness continuing): Concerning the question whether I would give more credit in my own case now, if a patient came before me and I made, what might be termed a routine—we won't call it "a routine"—an hour's examination of this patient, and after this patient had been hospitalized for a period of observation from August 22 to October 20, or October 21, under my observation, would I feel that I were better able to make findings after this period of observation, or would I believe that my finding originally made after one hour's examination would be stronger—That question can only be answered if I knew what the examination consisted of. Before a diagnosis of arrested tuberculosis can be made, certain examinations must definitely be made, and that patient kept under observation for a period of six months with the necessary exercise to see whether she is in an arrested condition. If that is not done, no doctor can make a diagnosis of an arrested case under any other circumstances. I do not mean anyone who has suspicions of tuberculosis must be under observation for six months. I said only those cases judged arrested.

Now in determining whether a patient has tuberculosis, then just as stringent and just as careful examinations must be made before that diagnosis is decided upon—and that includes sputum tests, X-rays, clinical findings, constitutional symptoms of fever which may or may not be present, loss of weight which may or may not be present, a feeling of a weakness, not able to do anything beyond the very slightest work, local symptoms of cough, expectoration, possible hemoptysis—meaning, expectoration of blood—and tubercular tests and sputum tests—and if those things are done, a positive diagnosis whether or not that

(Testimony of Dr. Samuel E. Welfield)

patient had tuberculosis can be done, and if it is not done, in most cases it cannot be made. That is the rule of the American Tuberculosis Association. After once you have been given a diagnosis and it has been determined you have active tuberculosis, they require six months of complete rest under certain conditions. You do not have to put the patient six months under observation for suspicious tuberculosis before you can say that they are arrested, if they ever had one. The majority of people at some time in their life have had unconsciously, without knowing it, tuberculosis. The majority of people, and you can make it 90, 95 or 85%—the greater majority. It usually occurs, and the reason we don't have so many more cases of active tuberculosis found is because, if I had tuberculosis at some time in my childhood, or during puberty, or after I had the necessary resistance to throw it off, therefore nothing happened. I have just got a few pieces of scar tissue instead of normal lung tissue, and that is the extent of it.

A study of chests has been made from autopsies, and it is found out that on practically everyone who dies, if there is an autopsy performed over them, in those cases where tuberculosis has not ever become progressively active, there are just a few pieces of scar tissue. It depends on the degree of involvement.

If I have a patient that comes to me with suspicions of tuberculosis, with a history of having had recurrent attacks of respiratory nature, influenza two or three times, bronchial pneumonia once, attacks of pleurisy from time to time, and subjective symptoms of that nature—that is, subjective symptoms which might be attributed to tuberculosis—and after examination of that person, the person

(Testimony of Dr. Samuel E. Welfield)

when he came to me would be suspicious from their history and their subjective symptoms that they possibly had an active tuberculosis. Then, after I had had them under observation for a period of two or three months, had made X-rays, and so on, and found scar tissue there—of course, with that history and scar tissue that I found, if I found their condition arrested, I would give them a diagnosis of arrested tuberculosis.

REDIRECT EXAMINATION

I thing the general toxic condition that resulted because of her tubercular condition was responsible for the gall bladder condition. I mean the poisons thrown out by the tuberculosis. A patient can have any organ in the body affected by myotasis, although the gall bladder is one of the most infrequent organs that are so affected. Ether accelerates the heart; a little stimulant to the heart; and in certain types of heart disease, uncomplicated, it does not produce any deleterious effect.

Her tonsils were out; she has no tonsils.

I heard these findings of Dr. Tappan and I heard read in evidence the findings of Dr. McGill, Dr. Long and Dr. Sharp, who examined her in 1919, 1920, 1921, 1935.

The findings of Dr. Tappan, the government doctor who examined her on August 16, 1920 are compatible from a medical standpoint with the tuberculosis findings of Dr. McGill, Dr. Long and Dr. Sharp. The findings are compatible.

(Testimony of Dr. Samuel E. Welfield)

Concerning the question Mr. Fooks asked me about this tubercular infection which practically all of us have—the difference between that tubercular infection and what is known as an active tuberculosis disease. What we all have is evidently an incipient tuberculosis, meaning a beginning or shortening incubation period, which the body is able to resist and nothing happens. In Miss Hill's case she has a moderately advanced type where the invasion or infiltration was marked, as shown by the X-rays and fluoroscope that I did the other day, and the classification of her tuberculosis is one of moderately advanced. She has had evidently exacerbations of quiescent and active periods from time to time since 1919.

RE-CROSS EXAMINATION

BY MR. FOOKS:

Q. There is such a thing as taking tonsils out and having them grow back, is there not, Doctor?

(Witness continuing):

It is possible to have your tonsils out and have small parts of tissue grow back. You still have something there—part of your tonsils. But not Miss Hill. Her tonsils are out—I didn't see any tissue grown back when I examined her the day before yesterday. I would definitely state her tonsils are out—not any tissue to the amount where you could say her tonsils are not out. In an operation that is not performed correctly, you may get a little tiny tab of tonsular tissue or lingual tissue away back in the

(Testimony of Dr. Samuel E. Welfield)

throat close to the tongue; but there is no tonsils there. Those tonsils are out, and when that patient is examined and a notation made, if the doctor wants to make a notation, it should be made "small tonsular tabs present" but not tonsils. A tonsil is a large—about the size of an almond—piece of tissue, enclosed in a capsule. When the tonsil is taken out you take the tonsil out with its capsule. A little piece from the base which is snared off—that part which is attached and is not enclosed in the capsule, may sometimes grow back. It is so small that in some cases it is insignificant, and in some cases it may grow the size of a rice grain.

(The witness, after being shown Dr. Palmer's report of examination that he made just prior to the time he operated on Miss Hill, April 25, 1927:) "I do not agree with that."

REDIRECT EXAMINATION

BY MR. GERLACK:

Q. Doctor, it states here about this examination: "Nose, throat, tonsils and teeth normal condition."

If the tonsils were out, would the tonsils be in normal condition on examination?

A. Well, if the tonsils are out, they usually so note it.

RE-CROSS EXAMINATION

BY MR. FOOKS:

Q. Yet, you never saw this woman until the day before yesterday?

A. I never saw her before.

DEFENDANT'S CASE

DR. LOUIS L. BURSTIEN

called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

My name is Louis L. Burstien. I am a physician by profession and graduated from Drake University, Des Moines, Iowa, in the year 1908. I have practiced my profession continuously since graduation up to about two years ago when I retired. I specialized in cardio-vascular diseases from 1923 up to the time of my retirement. The field of medicine known as cardio-vascular concerns diseases of the heart. I have specialized exclusively in heart diseases and have examined and diagnosed and recommended for treatment in the number of years that I have specialized in that particular branch of medicine well over 60,000 cases. I was in private practice up until the time of the war and was in the military service about two and a half years, then with the United States Public Health Service up until 1923 and with the United States Veterans Bureau from that time up to the time of my retirement. I served as a medical officer overseas.

I am familiar with the evidence as disclosed by the reports of physical examinations made of this plaintiff, Miss Frances Hill, between December 19, 1919 to and including November 7, 1931, when Miss Hill was discharged from the United States Veterans Hospital at San Fernando, California, and recall that evidence from two former trials. In addition to that evidence I am assuming that Miss Hill was examined by a private physician and surgeon in Phoenix, Arizona on April 24, 1927; the first visit made to Dr. Palmer's office was April 20, to be exact. Miss Hill at that time complained of a pain in her abdomen and

(Testimony of Dr. Louis L. Burstien)

side, and complained of being unable to retain her food and otherwise had digestive disturbances, and after these complaints were made to the doctor and after he had made an examination at his office, which was a preliminary examination, he was of the opinion that she should be hospitalized for the purpose of having an operation performed in the event she felt her distress justified her operation.

Following that, Miss Hill went to the hospital and on April 24, 1927 she was given a diagnosis—or rather an examination by the doctor, and incidentally, that examination included—at least the doctor had the advantage of a pathological examination made by Doctor H. P. Mills, a pathologist, in which he found: "Appendix walls sclerotic, distal lumen obliterated. Microscopic sections show chronic exudates on the surface, and marked fibrosis of the walls. Chronic appendicitis. Gall Bladder not normal size; walls not thickened. Microscopic sections show a moderate degree of fibrosis of the walls with atrophy of the mucosa. No recent inflammatory changes."

In addition to that there was a urine and blood test made at that time. It showed: "Appearance of urine, clear; reaction, acid; specific gravity, 1020; albumen, negative, sugar, negative; acetone, negative; diacetic acid, negative; casts, negative; epithelium, aquamous; pus cells, 1-2; blood, negative; hemoglobin, 75%"—hemoglobin meaning the color content—"leukocytes per c. mm., 6400; large lymphocytes, 32%; polynuclear: neutrophiles, 67%; basophiles, 1%."

After the doctor had reviewed these laboratory reports and had made an X-ray in the course of the examination of the abdomen and parts complained of, and then in ad-

(Testimony of Dr. Louis L. Burstien)

dition Miss Hill complained of having had a cough prior to her entrance to the hospital, and the doctor had an X-ray made of the chest, after that he made his examination prior to the operation, in which he made the following findings:

“General: Expression, one of discontent; skin, sallow; head and neck: Eyes react normally to light and accommodation; tongue slightly furred; nose, throat, tonsils and teeth, normal condition; no glandular adenopathy”—glandular adenopathy means the various glands of the body, and no glandular adenopathy means normal—. “No thyroid enlargement”, I examined Miss Hill’s thyroid at the first trial here in court and found it palpable. “Chest: Normal. Heart, normal position; apex beat in the fifth interspace; heart sounds are normal; lungs show moderate amount of fibrosis on X-ray; no abnormal sounds in lungs; no rales. Abdomen: tenderness under right costal margin with some muscle rigidity, of right rectus. Tenderness over lower portion of right rectus, especially marked on deep pressure. Neuro-muscular: Normal; cholecystogram shows retention of dye in gall bladder after thirty-six hours. Appendix not visualized. Tenderness in right iliac region on fluoroscopic examination. X-ray diagnosis was chronic cholecystitis and chronic appendix.”

Miss Hill was then taken to the operating room on April 25, 1927 and prior to that time it seems that she was given two hypodermics, and then at 7:10 they began the administration of the anesthetic starting with nitrous oxide and then followed by ether. One-fourth pound ether was used, that is one can. Ether comes in quarter-pound cans. The patient was started on nitrous oxide. That is practically the same as what the dentist uses when he ex-

(Testimony of Dr. Louis L. Burstien)

tracts teeth, you know, and probably after she was asleep they switched to ether and I would call it a normal amount, considering that both anesthetics were used. In the operating room, using nitrous oxide to start with, puts them to sleep in a smoother fashion without so much of a preliminary struggling and unpleasant entry into the narcosis, into sleep. Incidentally, I might have said that at the time Miss Hill was admitted to the hospital she was accompanied by a friend, in other words, she was ambulant the night before the operation. In addition to the anesthetics mentioned, nitrous oxide and ether, it appears that they had to use other anesthetics in order to put Miss Hill to sleep and to complete the operation. The operation was performed, which took from 7:20 in the morning on the 25th of April until 8:55, after which she was removed to a room at 9:05. She had an uneventful recovery and was discharged from the hospital five days after admission on the representation she felt good enough to leave.

With that additional history, together with what I know about this case from the medical reports of the Government, and by reason of having attended as a witness in former trials of this case, and having become familiar with the findings incorporated in the various medical reports which form the Government files in this case, and having heard the testimony of Doctor Young, a witness for the plaintiff who testified at one of the former trials, and also Doctor Cohn, who testified for the plaintiff, and having heard a good many of the depositions taken in this case read, in the light of the testimony that I have heard here,

(Testimony of Dr. Louis L. Burstien)

including what has been read to me this afternoon from the deposition covering the examination of Miss Hill in April of 1927 and an operation performed on her at that time, I have an opinion as to whether or not Miss Hill was suffering with any diseases of the heart and lungs at the time this operation was performed. This opinion is: any pathology, any diseases, if present at all in her lungs and heart would be rather negligible, if present at all. In view of the fact that a general anesthetic was given, that Miss Hill was on the table over an hour and a half with a serious surgical interference, removal of the gall bladder and removal of the appendix, and leaving the hospital of her own volition at the end of five days, which is certainly unusual, the only opinion that I could possibly hold would be that if any diseased processes of either the lungs or heart were present at all, it must necessarily have been of a minor nature, if present at all. I have an opinion if Miss Hill had had a diseased process in either the lungs or heart as I have expressed the opinion, of a minor nature, that condition would not have been of sufficient severity to have prevented her without injury to the disease, whichever it was, to have engaged in ordinary exercise, and if she had engaged in such activity there would be no condition there which would have been aggravated as far as the heart is concerned. As far as the lungs are concerned, I don't pretend to speak with authority on the lungs. All I know about the lung condition is what I heard of the testimony and what I heard of the testimony in previous trials and looking over the reports of previous examinations. At no time did it appear there was anything of a serious nature involved as far as either the heart or the lungs were concerned.

(Testimony of Dr. Louis L. Burstien)

At this stage of the trial the following proceedings took place:

MR. FOOKS: I presume that Counsel will stipulate that Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2 for identification may at this time be offered in evidence.

MR. GERLACK: No objection. I don't recall the circumstances of those.

MR. FOOKS: They were offered in evidence at the first trial. Plaintiff's 2, as I understand, was an X-ray of a normal chest, not Miss Hill's chest, but of a normal chest and so regarded; and Plaintiff's Exhibit 1 was a picture of Miss Hill's chest.

MR. GERLACK: There was a picture of her chest, but I don't remember the number. I will take your word for it.

MR. FOOKS: It was taken by you and in the Court's file ever since.

THE COURT: One of them will be designated as Defendant's Exhibit "J", and for the purpose of the record, after the Clerk has marked them, will you tell us again then what they now represent.

MR. FOOKS: Yes, your Honor.

THE COURT: The other will be represented as Defendant's Exhibit "K".

(The X-rays referred to were received in evidence and marked "Government's Exhibit "J" and "Government's Exhibit "K" respectively.)

MR. FOOKS: Next is Plaintiff's Exhibit 2 for identification only.

THE COURT: Is that still another one?

(Testimony of Dr. Louis L. Burstien)

MR. FOOKS: Yes, your Honor, two pictures of each X-ray.

THE COURT: Now then, we have one X-ray that is designated "Defendant's Exhibit J", and another one "Exhibit K", and another one "L". Will you tell us what Exhibit J depicts?

MR. FOOKS: Exhibit J is a picture taken of Miss Hill's chest in 1935. It is designated "Right"; I don't know what that means. The Doctor will have to explain that, I suppose. They were taken by Mr. Gerlack or at Mr. Gerlack's instigation, or by a physician at Mr. Gerlack's order, and were produced first by the plaintiff at the first trial, and at the second trial were produced by the defendant, both pictures of Miss Hill's chest in 1935.

THE COURT: What is this other one designated "Exhibit L"? What is the exhibit?

MR. FOOKS: The next one is "K".

THE COURT: Both "J" and "K" are X-ray pictures of the chest of Miss Hill, both taken in 1935.

MR. FOOKS: That is correct.

Q (By Mr. Fooks) Now, Doctor, I ask you to look at these X-rays which you have looked at before, I believe, and if you can tell us whether or not this picture shows an enlarged heart for the size and build of Miss Hill?

A There is no evidence of enlargement there.

Q The complete heart is not shown, is it?

A No, the lower part of the heart follows the outline of the upper half there. It is what we know as ashaped heart, although I doubt very much—was this a picture taken for heart or for lungs? There is quite a difference in the technique of the two.

(Testimony of Dr. Louis L. Burstien)

MR. FOOKS: It was produced the first time, as I think Mr. Gerlack will stipulate, for the heart specialist, Dr. Young.

MR. GERLACK: It was taken before he was in the case.

MR. FOOKS: It was produced at the trial and interpreted by the doctor.

MR. GERLACK: We didn't use it at the second trial. My recollection is that all the doctor testified was that it was a very bad X-ray, a poor specimen.

THE WITNESS: May I interject here. I doubt very much if that was taken particularly for the heart for the simple reason that the diaphragm here (indicating on X-ray film) obstructs the view of the lower border of the heart which would follow this outline (indicating), and if it were taken for the heart, the technique would be entirely different, and this diaphragm, by the proper breathing of the patient under instructions from the X-ray technician, the diaphragm would be down exposing the actual borders of the heart, you see. If this picture was taken for a heart plate, it is a very poor picture. But in any event, there is no evidence of enlargement, of relative enlargement there regardless. It is what we know as a sabot-shaped type of heart indicative, very suggestive of long continued disease of the thyroid gland possibly from long before puberty.

A JUROR: May I ask the doctor to point out the outline of the heart to us?

THE WITNESS: This picture is the patient facing towards you and this (indicating) is the left side. Now, the upper border of the heart starting right here (indicating) we can see it as far as this goes. Now, as I said

(Testimony of Dr. Louis L. Burstien)

before, the diaphragm which is the membrane which separates the contents of the abdomen from the chest, by the wrong type of breathing used by the patient during the time the picture was taken, lifted up and it obscured the lower border. But having seen so many thousands of these hearts we know that it follows a line like this (indicating). We know from the appearance of the upper two-thirds of the heart just about where the lower border would be. But, as I said before, it is a poor picture.

JUROR: Where is the upper two-thirds of the heart?

THE WITNESS: Right here (indicating) This part is what we call the aorta. Part of this shadow here (indicating) is the breast bone, what we call the sternum. This border coming around here (indicating), that is the aorta, that is the great vessel that leads out of the upper heart, the upper part of the heart and distributes blood to the rest of the body. That is, the main exit of the heart is a pumping station to the rest of the body; but the heart proper is right here (indicating), begins about here (indicating). This is the outline of the aorta (indicating) and the shadow cast here (indicating) is a combination of the aorta, the sternum or breast bone, and also the spine in the rear. That is a conglomeration of all these shadows.

A JUROR: Would the picture show any enlargement?

THE WITNESS: That picture shows no enlargement of the heart. Enlargement of the heart is a relative proposition. For instance, actual measurements of the heart are taken with reference to the transverse diameter of the chest wall. For instance, from here to here (indicating). Now, if the transverse measurements of the widest part of the heart, to speak in plain language, if the widest transverse measurement of the heart is 50 per cent or less

(Testimony of Dr. Louis L. Burstien)

than the complete transverse diameter of the cage of the chest, thoracic cage, from one wall to the other wall, the heart is within normal limits in size. It is a relative proposition; for instance, what might appear an enlargement with one person would not be an enlargement with another person. That is why we take the comparative measurements of the inside of the chest wall in comparison to the measurement of the heart proper.

Nothing shows like that here. But I may add here that the technique of taking a heart picture is different than taking a lung picture. In taking a lung picture their object is to develop certain shadows in the lung tissue. But in taking a heart picture, they always take what we call a two-meter picture, that is, a distance of six feet. That obscures more or less the lung shadows and brings the heart shadows into clearer relief and gives you your comparative sizes so that it is easier to make the measurements. That is why this picture is a poor picture.

JUROR: What would a good picture show?

THE WITNESS: A good picture would show practically all of the heart; the diaphragm would have been dropped down. The diaphragm raises and drops as you breathe in and out.

Q (By Mr. Fooks) May I ask, can you tell, Doctor, if that is taken from the front or rear?

A. Well, I don't know about that, but the patient here is facing the gentlemen of the jury. This is the left side, just exactly as I am facing you now.

Q What difference is there in that picture and Government's Exhibit K—in other words, the picture was made at the same time—if any difference?

A This picture shows practically the same thing except that it is a *sti* poorer picture. It shows up more

(Testimony of Dr. Louis L. Burstien)

properly the phenomenon of any pathology, if any present, of the lung tissue rather than the heart itself. You also have an obstruction of the lower border of the heart. You have complete obstruction by the diaphragm. I could hardly call that a heart picture at all. But it shows, in any event, no comparative enlargement to the measurement of the thoracic cage. You can see that at a glance.

In the previous testimony, in going carefully over the records on all measurements, heart measurements, as a matter of record of heart plates taken, which I didn't see but only the records of them of the official examinations made, the exact measurements of the heart in relation to the thoracic cage in millimeters and centimeters, in no case was there any enlargement, and it is borne out by this picture, poor as it is. There is no evidence of enlargement throughout any of the records in actual measurements.

MR. FOOKS: I presume, Mr. Gerlack, this picture was identified by Mrs. Greer and she testified that she took the picture on the 20th of September—or the 21st of September at one o'clock at your request.

MR. GERLACK: Yes.

THE COURT: The 21st of September.

MR. FOOKS: 1935.

Q Doctor, I don't know whether it is necessary or not, but here is the picture that has been stipulated, I believe, as a normal, good X-ray. It is stipulated that this is a picture not of Miss Hill's chest, but regarded as a normal chest.

A That bears out the remarks I made a few moments ago as to the level of the diaphragm here. The diaphragm, as I said, was the membrane that separates the contents of the abdominal cavity from the chest itself. Now, as

(Testimony of Dr. Louis L. Burstien)

you see, this shows about what you usually get in the outlines of a heart. Now, I wouldn't call this heart a particularly normal heart at that. It is what we call a drop-type of heart but nevertheless there is no enlargement and it is a rather small heart, as you gentlemen can see, in comparison to the thoracic cage from here to here (indicating on X-ray plate). We will just take the measurements here for curiosity. This is an inch rule (producing rule) instead of centimeters, but it will do. (The witness measures on X-ray plate) Approximately four inches; and the thoracic cage is around eleven inches. It makes it a rather small type of heart probably of a tall, rather slender type of individual. But you see, the thoracic cage here is eleven inches across. Any measurement of a heart up to five and one-half inches would be within normal limits. This is only four inches.

But it is a good, clear picture and gives you the outlines and shows you the outlines of the diaphragmatic wall.

A JUROR: What is the shadow, is that the heart?

THE WITNESS: Yes, that is the heart.

JUROR: That is about the way it shows?

THE WITNESS: In some cases. There are so many kind of machinery in connection with taking an X-ray, the technician, his type of work, some take very poor pictures; others take very clear pictures, and some have better X-ray machines to work with than others; and in certain types of pictures like in this other picture, you see, the shadows cast by the outlines of the heart were very dim and hazy. Here (indicating) they are a good deal clearer, although other pictures taken are much more clear than this. It is a matter of both X-ray technique and the quality of the machine that the picture was taken with.

(Testimony of Dr. Louis L. Burstien)

MR. FOOKS: I presume your Honor will instruct the Jury that this picture is not of Miss Hill or anyone that we know.

THE COURT: The Jury is instructed that this picture we are now examining does not reflect any condition of Miss Hill, the plaintiff.

MR. GERLACK: I understand, your Honor, it is produced simply for the purpose of comparison.

THE COURT: Merely to illustrate the doctor's testimony.

MR. FOOKS: I have an X-ray here that I appreciate the fact that if Counsel objects to the admissibility of this X-ray, why, of course I haven't the proper foundation laid. However, the X-ray was made on February 6, 1931 at Phoenix, Arizona. We have in our records the report of the X-ray which bears the same serial number, 2060, same date.

MR. GERLACK: I think I can shorten the procedure. I told Mr. Fooks at the start of this trial when he spoke to me about X-rays that if he would state he got them from the Veterans Hospital in San Fernando and they were the X-rays taken of Miss Hill, I wouldn't object to not laying a foundation.

MR. FOOKS: The situation is this: The X-rays at San Fernando have never been located. I have a doctor who will testify to the fact from San Fernando. We have the report of the X-rays but they were sent some place.

MR. GERLACK: Where was this taken?

MR. FOOKS: Phoenix, Arizona by Dr. Donnell.

MR. GERLACK: Did you get it from an official source?

(Testimony of Dr. Louis L. Burstien)

MR. FOOKS: It came from the Veterans Administration in Los Angeles.

MR. GERLACK: I will take your word for it that it is an X-ray of Miss Hill. I won't offer any technicalities.

MR. FOOKS: That is Defendant's next in order.

THE COURT: Marked "Defendant's Exhibit M."

(The X-ray plate referred to was received in evidence and marked "Government's Exhibit M")

MR. GERLACK: Do you recall, Mr. Fooks, whether that X-ray of a normal person was made of a man or woman?

MR. FOOKS: I don't recall. I don't know who produced it.

MR. GERLACK: Usually sometimes it has the name written on the X-ray itself.

MR. FOOKS: I was under the impression that the X-ray technician who produced these others produced that one for comparison.

MR. GERLACK: It wasn't the technician.

THE COURT: In the first trial it was marked as a plaintiff's exhibit.

MR. FOOKS: For identification.

MR. GERLACK: Is there a name on it? May I see it, the one of a normal person.

Q (By Mr. Fooks) Doctor, I show you an X-ray made on February 6, 1931. You have never seen this X-ray before, have you, as far as you know?

A I couldn't state.

Q In other words, I didn't show it to you at least today?

A No, not to my knowledge.

(Testimony of Dr. Louis L. Burstien)

Q And I ask you to examine that, Doctor, and tell us if it does show anything about the heart. I don't know. That is for you to interpret. Could you get any idea?

A That shows nothing pathological.

Q How about size?

A Size is within normal limits.

Q Doctor, you already expressed the opinion that from the evidence which you heard and the additional evidence given you by myself and the Court, from that evidence which comprises the medical reports of the Government together with the additional evidence of Dr. Palmer's operation and examination and the evidence which I believe you testified that you heard, Dr. Young's testimony on one occasion, and some of the depositions, would you have an opinion as to whether or not a person who was in the condition that you expressed the opinion that she was in as far as her heart is concerned—was concerned in 1927, could have had a heart disease or a condition of the heart on February 3, 1919 which at that time would have been irreparable and incurable? Would you have an opinion?

A Yes, I would have an opinion.

Q What would that opinion be, Doctor?

A The answer is no.

Q Now then, Doctor, if a patient were to come to you—we will put it this way: Assuming that a patient had come to you on April 20, 1927 and you had made a preliminary examination of that patient and you had sent her to the hospital and had the usual tests made, then had made a physical examination of that patient on April 24, 1927 and had found that patient suffering from myocarditis, mitral regurgitation, aortitis, moderately advanced, active tuberculosis—

THE COURT: You mean pulmonary.

(Testimony of Dr. Louis L. Burstien)

Q (By Mr. Fooks, continuing) Pulmonary tuberculosis, would you have recommended that patient to have submitted to an operation for gall bladder removal and appendectomy, and that the patient should be given a general anesthetic, if necessary, to perform that operation, unless it was such an emergency—unless such emergency existed that it would be necessary to perform an immediate operation to save life.

A If there were no emergency existing I absolutely couldn't possibly recommend a general anesthetic to be given in a serious surgical assault of that nature, and even if an emergency did exist I would have to warn the patient that they are taking this anesthetic at their own risk, although that wouldn't be the choice of anesthetic granting that such pathology of the lungs and heart existed.

MR. FOOKS: You may examine the doctor.

CROSS EXAMINATION.

I would not make a diagnosis of aortitis from an X-ray. It is merely suggestive and corroborative evidence. The evidence showed the measurements, as I recall, of plaintiff's heart were up to six centimeters which is within normal limits; unless positive clinical evidence was produced showing an aortitis I could not attach very much value to the X-ray. I am familiar with these Government records. If a person once has heart disease, he always has it if it is organic. Damaged heart includes aortitis. If she had aortitis in 1931 she would have it now.

The Government's medical report of May 29, 1931, from the Veterans Hospital at San Fernando reads, "Heart, PMI 6th interspace." That PMI stands for

(Testimony of Dr. Louis L. Burstien)

three-quarters point of maximum intensity. The report also reads "left mid clavicular line; aortic second sound rather markedly accentuated with systolic murmur of aortic valve" which means a sound that is heard with a stethoscope designated as a murmur over that area. It would be rather careless procedure to make a diagnosis of aortitis with an X-ray alone. Systolic murmur of the aortic valve would indicate organic heart trouble. "Accentuated upon exercise over aortic and pulmonary valve areas" means the sound becomes louder with provocation such as exercise. It is possible that a person at rest and not stirring around might have a damaged valve in the heart, and the physician examining that person would not hear the murmur, particularly when they are examining the chest for rales and tubercular condition.

At this stage of the trial the following proceedings took place:

BY MR. GERLACK: Q Doctor, just for the purpose of understanding the matter, I understand that a stereo means that they take two X-ray pictures about a quarter of an inch apart, isn't it? Then they put them in the shadow box and each eye looks at a separate picture; that gives you depth?

A That gives you depth.

Q As far as looking in this shadow box—

A (Interrupting) This is just a flat one.

Q This is a picture of Miss Hill's chest, Government's Exhibit J. How can you tell where the lower border of that heart is?

A Well—

(Testimony of Dr. Louis L. Burstien)

Q (Interrupting) You are guessing at it?

A We went through this before, Mr. Gerlack. I can only repeat what I said before. You just naturally follow the outlines that you have visible.

Q You can't tell from this picture, can you, whether the border of this heart is here (indicating) or here (indicating), can you?

A Yes, just about. After examining thousands of hearts you know just about where that border will come to. That is merely the diaphragm obscuring the normal outlines.

Q What are these organs in here (indicating on X-ray plate)?

A On one side would be the liver; on the other side, the stomach; and all that area being the diaphragm pushed up to obscure the shadows of the heart.

Q Now, taking this normal picture here, Doctor—

THE COURT (Interrupting): Exhibit L.

MR. GERLACK: Government's L.

Q This shows the heart considerably smaller?

A That heart is what we call a "drop" type of heart and is small. You use the word "normal". I don't know whether that is a normal heart or not. Only a physical examination would determine it. It might be a very abnormal heart. The only thing we can say about it is that it shows the outlines clear. It is too small a heart for the thoracic cage.

Q It appears to me that this chest of Miss Hill's is not an awful lot wider than this chest here (indicating).

A We can take the measurements. That was taken in 1931.

(Testimony of Dr. Louis L. Burstien)

Q I think this was taken in 1935.

A 1935—well, you must remember, Mr. Gerlack, I never examined Miss Hill, never did examine her heart, and she may have heart trouble and aortitis at the present time. But all of the records of the measurements, the actual measurements taken show no evidence of enlargement.

Q Doctor, isn't it a fact that the size of hearts varies with individuals? Some have small ears, some have large ears; some have small noses, some large noses.

A Yes, sir.

Q A small man with a large nose and a large man with a small nose?

A That is right.

Q Isn't it a fact you get a large person sometimes with a small heart normally?

A That is the reason why we use the thoracic cage diameter as a comparative instead of taking the actual measurement of the heart itself. If the heart is within 50 per cent of the diameter, finding nothing else wrong with it, we call it within normal limits.

Q Doctor, if Miss Hill had what Dr. McGill found in 1919—he examined her when she first came back from the war, which was along in the latter part of January of 1919,—and he made these findings:

“We made a physical examination and the findings were rales of upper lobes of the lungs, a large heart with mitral regurgitation, otherwise known as mitral insufficiency, which to an average man is a large and leaky heart.”

(Testimony of Dr. Louis L. Burstien)

If she had that condition of a heart with mitral regurgitation in 1919, she would have it today, wouldn't she?

A As that question is put, I don't think I can answer that fairly. Assuming that Dr. McGill—is that his name—that Dr. McGill found all these findings and then we have numerous, very numerous examinations made subsequent to this examination—

Q (Interrupting) I beg your pardon; the simple question was this: If Dr. McGill found that condition—I will withdraw that and put it this way: If, as a matter of fact, she did have a large and leaky heart with mitral regurgitation, if she had a large heart with mitral regurgitation in 1919, she would have it today and will have it as long as she lives?

A I will answer that she would have had it all the time from that time on.

Q Yes. In other words, a condition like that is never remedial?

A A condition like that may be under proper treatment arrested, but as far as absolutely cured is concerned, it is not.

Q Once a damaged heart, always a damaged heart?

A Yes.

Q Now, Doctor, are you familiar—you say you are familiar with these Government records here?

A Yes.

Q Do you agree with them?

THE COURT: That is a pretty broad question.

(Testimony of Dr. Louis L. Burstien)

BY MR. GERLACK:

Q Do you agree with the findings of these doctors?

THE COURT: Is there any particular report that you have in mind, Mr. Gerlack? I think the question is too broad.

MR. GERLACK: I think probably it is.

Q Here is what I have in mind, Doctor—

THE COURT (Interrupting): As I understand it, this digest was prepared by Government counsel and submitted to you, Mr. Gerlack?

MR. GERLACK: Yes, your Honor. As far as I can see, it seems to be fairly accurate.

Q Now, Doctor, calling your attention to the examination made by Dr. W. J. Tappan, surgeon, United States Public Health Service, El Paso, Texas, August 16, 1920, wherein he says, "Claimant well developed and nourished; chest full and expansion good. Evidence of hyper-plastic pleuritis, left base, with some post-influenza rales, which may possibly be tuberculosis. Fibrosis right lobe, upper, especially posteriorly. In view of report of X-ray findings we have hesitated to give this claimant a diagnosis of tuberculosis though the present examiner feels sure that this should have been done long ago. X-ray report made by Dr. J. W. Cathcart under date of June 29, 1920, is as follows: Lungs—hilus shadows, rather heavy and contain large number calcified glands. Apparently some scar tissue scattered throughout right side. Conclusions: Markings not typically tuberculous."

And the Doctor further states, "After careful consideration of all physical findings in this case, the writer feels that diagnosis of tuberculosis should have been given previously."

(Testimony of Dr. Louis L. Burstien)

Now, Doctor, the next examination—the previous examination, previous to that, was 12 days before, and was on August 4, 1920, by Dr. Ernest B. Thompson, surgeon. Public Health Service. He says:

“Claimant well developed and nourished; chest full and expansion good. Some slight roughening on the larger bronchi, otherwise chest negative.”

Now, Doctor, is it possible for a person—by the way, these findings on the examination by Dr. Thompson on August 4, 1920, shows a practically normal person, do they not?

A Practically so, yes.

Q In your opinion, is it possible for a person to develop a condition shown by Dr. Tappan in as short a time as 12 days?

A Well, Dr. Tappan's findings, Mr. Gerlack, as far as his findings here are concerned, they do not show anything positive either.

Q He states here that the diagnosis—

A (Interrupting) He makes a diagnosis of chronic bronchitis and tuberculosis, but qualifies that by the conclusion that the markings are not typically tuberculous, and the diagnosis is pleuritis, which is bronchitis. It would be natural if tuberculosis would be suspected that they would tell a person to stay abed part of the time and get proper rest and proper treatment, just merely precautionary.

Q He did send her to the hospital as you see in the next report?

A Yes; that is true. It says, “Hospitalization not advised, although claimant will accept, if necessary.”

(Testimony of Dr. Louis L. Burstien)

Q Are you reading? Read the notation under "Doctor's Conclusions," by Dr. Tappan.

A Yes. At that time "Hospital care advised and patient transferred to Fort Bayard, New Mexico. Should be in bed part of time. Able to travel."

Q Read the line above that, Doctor.

A "Doctor's Conclusions: Claimant not able to resume former occupation as nurse. Should be in bed part of the time. Able to travel. Hospital care advised, and was transferred to United States Public Health Service Hospital at Fort Bayard, New Mexico. Vocational handicap major—vocational training not feasible. After careful consideration of all physical findings in this case, writer felt that diagnosis of tuberculosis should have been given previously."

Q Doctor, do you think from this X-ray of the heart which you told us was what you called a "sabot-shaped" heart—

A (Interrupting) Yes.

Q (Continuing) —do you think that she is suffering from thyroid trouble at the present time?
had some of the residuals of an old thyroid trouble.

Q You don't contend she is suffering from thyroid trouble at the present time?

A No. The shape of that heart merely indicates an old thyroid condition of many years' standing; that is all.

Q The basal metabolism test is a recognized test for thyroid trouble, is it not?

A It is merely corroboratory evidence.

Q It is about the surest single test that there is, is it not?

A No, I wouldn't say so.

(Testimony of Dr. Louis L. Burstien)

Q When the basal metabolism test is given, what are the limits of the test concerning which they decide whether a person is within normal limits?

A Oh, plus 10 to minus 10.

Q 10 either way. Minus 2 would be considered within normal limits?

A Within normal limits, yes.

Q Doctor, I understood you to say you didn't hear Miss Hill's testimony at either trial?

A No, I did not.

Q You saw in this record that she left the hospital after five days. Had she left the hospital seven days after the operation, would that make any difference in your testimony here as to the seriousness of the condition at the time this operation was made?

A If she left seven days instead of five days after?

Q And she left on a stretcher.

A Why, an operation for removal of gall bladder is a very serious operation and the average length of time that a person is in bed confined is around two weeks or more; and because there was a double surgical assault here inasmuch as the appendix was removed, and the presence of serious pulmonary or heart pathology would certainly contra-indicate the use of a general anaesthetic.

Q There is nothing unusual in using a general anaesthetic on patients suffering from T. B., especially, is there?

A Well, it is a very risky proposition.

Q It is done every day, is it not?

A Well, it is at the patient's risk. Nowadays, of course, the anaesthetics are being improved right along, and a good many of the tubercular—I don't qualify as a

(Testimony of Dr. Louis L. Burstien)

tubercular specialist, but I know that at Fitzsimmons General Hospital, which is a tuberculosis hospital, a good many of the operations, major operations, on tubercular patients were done under local anaesthetics, even serious operations, such as removal of thyroid and things like that.

Q For instance, Doctor, take this operation where they go out in back.

A Spinal anaesthesia.

Q A case where a lung, one lung is completely eaten by the ravages of tuberculosis, to stop the lung from moving—

A (Interrupting) Thoracoplastic.

Q That is a thoracoplastic, and those are done every day. They are only done in a far-advanced case of tuberculosis, aren't they?

A Well, I don't feel qualified to answer that. You are getting out of my realm now.

Q Doctor, ether, as I understand, is considered more or less of a stimulant to both heart and lungs?

A Ether?

Q Yes.

A Yes; rather than stimulant—the word “stimulant” would not be the proper word. Let us call it more of an irritant rather than a stimulant.

Q What I mean, it is considered fairly safe even for an operation on people having heart trouble?

A Well, I wouldn't consider it so, no.

Q I mean, it doesn't necessarily follow because a person has a bad heart and is given a general anaesthetic by the use of ether that there is necessarily going to be any bad after-effects?

(Testimony of Dr. Louis L. Burstien)

THE COURT: When you say "necessarily," you mean, is there any danger?

MR. GERLACK: Yes; I mean probable danger.

THE WITNESS: Yes, the only way I can answer that, Mr. Gerlack, is that I wouldn't undergo a general anaesthesia myself with a serious heart condition.

I certainly wouldn't advise anybody else to do what I wouldn't do.

BY MR. GERLACK: Q You suffer from heart trouble yourself?

A Yes; exactly.

Q I believe you are rated permanently and totally disabled yourself?

A Yes.

REDIRECT EXAMINATION

BY MR. FOOKS:

Q One question, Doctor: Is the electro-cardiogram similar—is it used for the same purpose to confirm a heart condition as the X-ray is to confirm a chest condition, in other words, corroboratory?

A Corroboratory, I believe, yes.

MR. FOOKS: I think that is all.

MR. GERLACK: That is all.

BY THE COURT: Q Doctor, there has been a good deal of interrogation here, but so far as the period of time is concerned, it seems to have related to the time this lady went under this major operation in April of 1927. You have told us that you have studied these medical reports; that you heard the testimony of Dr. Young, Dr. Cohn, and then you heard the testimony read

(Testimony of Dr. Louis L. Burstien)

here this afternoon relative to the conditions reported as existing in April of 1927.

A When I heard Dr. Young and Dr. Cohn that was not at this trial; that was at the previous trials.

Q Yes.

As I understand, is there any claim that there was any substantial departure at this time?

MR. GERLACK: No, I think not, your Honor.

BY THE COURT: Q In the light of what these medical reports show—I am speaking now of the reports in the Government files, including what they show as to a work record—have you an opinion as to whether or not on September 1, 1919 this lady was suffering from such a heart condition that she would be unable to pursue some substantially gainful occupation such as a sedentary vocation with reasonable regularity and without endangering her health. Have you an opinion one way or the other?

A Yes, your Honor.

Q What is that opinion?

A The answer is "Yes", as far as the heart is concerned.

Q Will you tell us just what you mean when you say "Yes"?

A I mean that there was from 1919—of course, at the present time the plaintiff may have a heart condition, but from the records and from 1919 and all the records on, there is nothing of a heart pathology shown.

THE COURT: Perhaps we can get at the matter a little more clearly.

Q You have stated that you have an opinion as to what this lady's condition was as of September 1, 1919, with respect to her pursuing some substantially gainful

(Testimony of Dr. Louis L. Burstien)

occupation. Now, so far as the period is concerned covering say, from September 1, 1919, until April, 1927, when she underwent this major operation, in your opinion was she able on September 1, 1919, to pursue some substantially gainful occupation with reasonable regularity such as a sedentary occupation without endangering her health?

A As far as the heart is concerned, yes.

Q Now, then, as I understand it, you are not prepared to express any opinion with reference to the lung condition?

A Well, I do not feel it would be fair for me to do so because I don't feel qualified to do so. There are other men better qualified to do that than myself.

Q In other words, your answer is not to be understood that you see anything in this record that would cause you any doubt about it, but from a professional standpoint, because you don't specialize in diseases of the lungs, you prefer not to express an opinion?

A Exactly, your Honor.

THE COURT: The Court has no other questions.

RE CROSS EXAMINATION

BY MR. GERLACK:

Q Doctor, if she had a large and leaky heart such as Dr. McGill found in January, 1919, the mitral regurgitation and she also had a heart murmur as found in 1920 or '21—I believe that both Dr. Sharp and Dr. Long found—it would be dangerous to her health and aggravate her condition, make her worse, if she engaged in an occupation or engaged in physical activity, would it not?

A I can only take the whole picture.

(Testimony of Dr. Louis L. Burstien)

Q Just answer this.

A That couldn't be properly answered.

THE COURT: I think Mr. Gerlack's question means this: Disregarding or assuming that you hadn't heard or hadn't seen these other records, assuming that you knew nothing more about the case than that she did in fact have such a heart condition as Mr. Gerlack has described.

THE WITNESS: Assuming such to be a fact, there is only one answer I could give to that, and that is,—I don't know how you framed the question—I think the answer would be no, it would be dangerous for her to continue, assuming such pathology to be present.

BY MR. GERLACK: Q Assuming that to be true.

Doctor, your view of this case is based largely upon the Government records that you have seen, and without taking into consideration the testimony of Miss Hill and these various other witnesses who observed her in and out of the service. That is true; isn't it?

A Yes, I went over the records very carefully.

MR. GERLACK: That is all.

MR. FOOKS: That is all.

THE COURT: You referred to Dr. McGill—who were those other doctors?

MR. GERLACK: Dr. Sharp and Dr. Long.

THE COURT: Is there in the deposition of anyone anything indicating that they were testifying from a record or testifying exclusively from memory?

MR. GERLACK: I think both were testifying from memory.

THE COURT: All three of them?

(Testimony of Dr. Louis L. Burstien)

MR. GERLACK: Dr. McGill testified—he had the record in 1933 when he stated he made a record for the Veterans Administration and sent an affidavit, and he had that affidavit. He testified on this deposition.

THE COURT: What I am getting at is this: The testimony given by these three doctors, including Dr. McGill, was not based upon any record made at the time of the examinations?

MR. GERLACK: Yes.

THE COURT: As far as Dr. Sharp was concerned, he had no records; as far as Dr. Long was concerned, he had no records; as far as Dr. McGill is concerned, what did his deposition disclose as to having a record that was made at the time of the examination?

MR. GERLACK: He states in his deposition that in 1933 he gave Miss Hill an affidavit to be used and filed with the Veterans Bureau. When he gave this deposition in '35 or '36, I think he testified in one or two of the depositions that at the time he was testifying at the deposition he had a copy of the affidavit, and at the time he made the affidavit, he had a copy of the record itself. The record was lost. He didn't know who got it, whether he gave it to Miss Hill or whether to the Veterans Bureau man. But in that way he did have a record; he had a record of his record—I would put it that way.

THE COURT: You mean he had an affidavit made in 1933 from a record that he had made in either 1919—

MR. GERLACK: (Interrupting) He had the record before him when he made the affidavit. He incorporated that in the affidavit. He had the affidavit when he made the deposition.

(Testimony of Ross M. Crosher)

MR. FOOKS: I will clarify that to some extent. We sent the affidavit to the doctor, the Government did. In other words, we sent him an affidavit—a photostatic copy of the affidavit, that he had furnished the Veterans Bureau in 1935. That was the only record that he had before him at the time of making the deposition, the affidavit that was furnished by the Government.

ROSS M. CROSHER

called as a witness on behalf of the defendant, having first been duly sworn, testified as follows: I am Assistant Secretary of the Pacific Mutual Life Insurance Company which has been in existence for the last week or ten days, that is the new company. I was 35 years with the Pacific Mutual Life Insurance Company of California, which is the same company I am now employed by, except it is reorganized. I was subpoenaed here today to bring certain reports pertaining to Frances Hill. I am the official custodian of those records for the purpose of appearing here. I am prepared to testify that the records I brought here were the official records of the Pacific Mutual Life Insurance Company of California, and now are the official records of the Pacific Mutual Life Insurance Company as reorganized, and that those records were made and kept in the regular order of business. This is an original application dated October 22, 1924 for two life income bonds maturing at the age of 55 providing for monthly payments of \$25.00 each at maturity. These bonds were issued on December 5, 1924 and January 5, 1925, respectively. The annual premium rates on each of the bonds issued was \$171.13; there were four annual premiums paid on the bond issued December 5, 1924, this

(Testimony of Ross M. Crosher)

bond was in force and effect until December 5, 1928; there were three years' premiums paid on the bond issued January 5, 1925, causing that bond to remain in force and effect until January 5, 1928. Both of these bonds were surrendered for cash and a check dated July 20, 1928 was issued in favor of the plaintiff in payment of the first bond in the amount of \$54.62, and a check dated May 21, 1928 in payment of the second bond in the amount of \$23.56. Miss Hill had effected a loan of \$547.20 on the bond issued in December 1924, and \$370.44 on the bond issued in January 1925, and the checks in settlement of these bonds in the amounts of \$54.62 and \$23.56 were the remaining cash surrender value on these bonds after deduction of the loans.

CROSS EXAMINATION

There was no physical examination taken in connection with the application for these bonds; no life insurance ever was issued in connection with it, no physical examination made in connection with it, there were no sick benefits, application for sick benefits, nor any health insurance whatsoever made in connection with the application. There is no evidence in the file as to whether the company doctor of the Pacific Mutual Life Insurance Company in Phoenix at the time of the application was Dr. Sultz, and does not show a report of any physical examination made by Dr. Sultz of Miss Hill; all that shows in the records of the insurance company is that she applied for an annuity bond payable in the amount of

(Testimony of Ross M. Crosher)

\$25.00 a month at age 55 with an annual premium of \$171.13 on each bond. I couldn't say just when she first borrowed on the bonds. The records probably wouldn't show. I presume the liability terminated upon endorsement of these checks—\$23.56 dated May 21, 1928 and \$54.62, dated July 20, 1928.

REDIRECT EXAMINATION

There were just two bonds, that is, each bond provided the payment of \$25.00 a month at the age of 55.

RE CROSS EXAMINATION

I think that is all of the records of the insurance company relating to Miss Hill. There is no record indicated here and to the best of my judgment there was no physical examination or application for life insurance in the files of the insurance company. A physical examination or the physical condition of a person taking out that kind of an annuity bond is not material; it is really purchasing a deferred annuity; it is more in the nature of a savings account than life insurance; it does not involve life insurance in any respect. I am pretty sure Miss Hill had no other dealings with the Pacific Mutual Life Insurance Company. I produced all of its records regarding these bonds and had no difficulty in finding them and I do not believe there are any other policies for Miss Hill at any other time. It is not usual in this type of bond to take out a sick benefit with the bond.

(Testimony of Dr. J. J. Klein)

DR. J. J. KLEIN

called as a witness on behalf of the defendant, having first been duly sworn, testified as follows: I am a physician and graduated at the University of Michigan in the class of 1892, and the University of Buffalo in 1910; I have practiced my profession continuously since graduation and have specialized in the treatment of tuberculosis for the past 18 or 20 years; I have been connected with the United States Veterans Hospital at San Fernando, California, for the past eight or nine years. If my memory serves me right, I was a member of the staff of the San Fernando Hospital in April 1931. I didn't remember Miss Hill when I was called on the case but after I met her, I recall her now. I could not testify concerning Miss Hill from my own personal recollection but would have to have my memory refreshed. Upon being shown Government's Exhibit H for identification and having refreshed my memory therefrom, directing my particular attention to the report dated April 3, 1931, the date of admission of Frances Hill, United States Veterans Hospital at San Fernando, California, which bears my signature, being particularly concerned in the lung examination, I find from this record there was a slight increase of palpation fremitus over both upper lobes in plaintiff's lungs; percussion over the right lung was negative; that there was a slight decreased resonance above the 3rd rib and 5th dorsal spine, more marked in the second interspace anteriorly; that the right lung, on listening with the stethoscope, the whisper and breath sounds were within normal limits, and no rales heard. In the left there was an increase in the whispered voice and there was slight

(Testimony of Dr. J. J. Klein)

bronchial vesicular breathing above the 2nd rib and 5th dorsal spine; that the breath sounds were somewhat harsh, but no rales were heard. The summary of my findings at the time of the examination on April 3, 1931, was: "Fibrosis left upper. Diagnosis, tuberculosis, chronic, pulmonary, minimal inactive." There was some question about plaintiff's heart being affected at the time of my examination and for this reason in my first diagnosis I noted on my report that plaintiff should be put under observation for heart disease, and that was later changed to tachycardia simple, "as per electrocardiograph made at Sawtelle, California." The interpretation of the electrocardiograph was not made by me. Tachycardia simple means a rapid heart action usually brought about by little exertion or excitement and after rest it seems to subside. Tachycardia simple is a synonymous term with palpitation.

Being shown Government's Exhibit N for identification, a file of clinical records from the Veterans Hospital at San Fernando, California, and after refreshing my recollection therefrom, I find I was Miss Hill's ward surgeon a great deal of the time. She was admitted to the hospital for treatment April 3, 1931, and her initial chest examination was the one that I quoted a while ago. Not being a cardiac man, I asked for a Board examination on Miss Hill. By a "Board" examination I mean a group of doctors, medical men, a Board of three medical examiners, consisting of Dr. Walker, Dr. Harrod and myself. In that examination the diagnosis of tuberculosis, pulmonary, chronic, minimal was confirmed inactive; the Board also gave Miss Hill a diagnosis of chronic aortitis with a well compensated heart, not of syphilitic origin, probably

(Testimony of Dr. J. J. Klein)

rheumatic. During her stay in the hospital her sputum examinations, we have a record of ten, were all negative for tubercular bacilli. Miss Hill was put on a graduated exercise shortly after she entered the hospital, but kept that up for a short period and she was taken off of that on account of she said her heart beat fast, and there was also some question of a little arthritis. I mean by "graduated exercise", the temperature is usually taken in the morning before the patient starts out. She is asked to walk a certain distance at regular gait, and then she comes back to the ward and rests for about 20 minutes, when the temperature is again taken. Where there is active tuberculosis, of course, exercise usually raises the temperature above the ordinary line of temperature that she has. The graduated exercise, as a rule, continues until we are satisfied in regard to making the diagnosis. In this case we had to give that up more on account of her heart than anything else. We were satisfied that there was no activity present as far as tuberculosis was concerned. She was discharged from the Veterans Administration Hospital at San Fernando on November 17, 1931 because she had received the maximum benefit from hospitalization. Upon discharge plaintiff was given a diagnosis of aortitis, chronic, well compensated, not of syphilitic origin, probably rheumatic, improved, tachycardia simple, which condition was improved on discharge. Under observation on admission for heart disease changed to aortitis, chronic, tachycardia, simple. That was the result of the electrocardiograph and the cardiologist consultation made at Sawtelle. When plaintiff left the hospital her diagnosis was changed from diagnosis upon admission of tuberculosis, chronic, pulmonary, minimal, in-

(Testimony of Dr. J. J. Klein)

active, to tuberculosis, chronic, pulmonary, minimal, arrested. She was in the hospital over six months. My first diagnosis was "inactive" and my second diagnosis was "arrested". Generally the Veterans Hospital at San Fernando follows the classification of tuberculosis laid down by the National Tuberculosis Association, and one of the rules of the National Tuberculosis Association is that where one remains quiescent or inactive for a period of six months a change of diagnosis to arrested tuberculosis is justified.

CROSS EXAMINATION

Although I observed her over six months I only gave her exercise for two or three days except the exercise she would get in going out on passes and leaves. I did not examine her immediately after she left when she went out on passes and leaves; I didn't think it was necessary. It is true that the rule of the National Tuberculosis League provides that before a diagnosis of arrested tuberculosis is justified, in addition to observing the patient for six months, the last two months of this six months the patient must have been given an hour's walking exercise twice daily, or its equivalent, and then if the patient shows no symptoms of tuberculosis, then and then only are you justified in making a diagnosis of arrested tuberculosis. That is quite true but this patient, when she came, she was not found active. We don't know how long she was inactive; it might have been active five months or two years before that. We gave her this exercise that is one of the cardinal rules as far as humanly possible, but we didn't want to aggravate the cardiac condition. As far

(Testimony of Dr. J. J. Klein)

as the heart was concerned, I left the matter in the realm of considerable doubt, but not as far as the lungs were concerned. I felt satisfied there was an inactive case of tuberculosis. I think I could demonstrate it according to the rule outside of the exercise. She had exercise, not every day; she had exercise going out on passes. I didn't find this heart condition on my first examination; I am not a cardiac man. It might have been there; no doubt it was. It is not a fact that all the specialists of the Veterans Bureau—for instance I specialize in chest and tuberculosis; another man may be a specialist like Dr. Burstien in heart and Dr. Long is a specialist of mental, nervous diseases—tend when examining a patient like that, to usually examine for one thing and that is the thing—his specialty. I gave them a general physical examination but I didn't happen to catch anything on the heart at that time. I am presuming that it was there from the subsequent results. I dare say it is possible that a person can have a heart murmur and a chest man, a specialist on tuberculosis, looking only for tuberculosis, can very easily pass up that murmur. I was looking for pulmonary tuberculosis and I found it inactive. Tuberculosis is considered a progressive disease unless it becomes arrested or inactive. The usual course is to go from incipient, moderately advanced, far advanced if it keeps on. When I spoke of her heart being compensated I am not quoting myself. I am quoting the records and I am not a cardiologist and I don't presume to give an opinion on cardiac conditions. That is why I had others examine her. I recall telling Miss Hill when she complained to me of feeling tired that she would probably be tired for the rest of her life.

(Testimony of Dr. C. H. Mason)

DR. C. H. MASON

testified as a witness on behalf of the defendant by deposition as follows: I am a physician by profession engaged exclusively in X-ray work; I am a graduate of Maryland Medical School, class of 1911; I have been engaged in the specialized practice of X-ray work for approximately 15 years; I know Frances Hill, the plaintiff. Miss Hill early in 1921 was sent to me by the Veterans Bureau as a vocational training student to study X-ray technique; we had her in the X-ray laboratory; I don't remember whether we had her there four or six months. She was a dark haired, rather chunky girl, she wasn't very tall, I don't think, about five feet three or four, rather stout, if I remember correctly, and wore glasses. During the time she worked there she was there practically every day; I don't think the girl ever missed any time at all. It was very evident that she wasn't interested in X-ray work; she didn't particularly care to learn it at all, and, of course, we very soon got the habit of not using her any more, except where necessary. I don't know why the connection between our office and the plaintiff, Frances Hill, was terminated unless she just stayed so long and stopped, it has been so long ago I really don't remember very much about the details of the girl. I do not recall any shortness of breath on her part; I made no actual physical examination of her whatever. We assigned her very little work to do; she broke one of our X-ray tubes, and those things are very delicate, you have to be very careful about anything pertaining to X-ray work, the voltage is high, and unless someone is very much interested in her work and seems desirous of learning the work,

(Testimony of Dr. C. H. Mason)

you are very careful about letting them do anything. Our office hours are from around 8:00 to 8:30 until 5:00 in the evening; she was there practically the entire time. She would go out for lunch at noon, one hour for lunch; our office was open six days a week.

CROSS EXAMINATION

The duties she had were not arduous and would be practically no tax on her. I wouldn't say that her apparent indifference may, perhaps, have been due to the listlessness that goes with tuberculosis, to some extent, at least; she didn't give me the appearance of anyone that was suffering from an active tuberculosis or running a fever, or anything of the sort. I made no examination of her at all. I have seen a number of tubercular cases that are fleshy. As to whether she might have performed all of the duties that I and Dr. Cathcart would have required of her in our laboratory and still have had a fairly advanced tuberculosis, I don't think she could have performed the duties we would have required of her, had she been interested in her work, with a well advanced case. She could perform the duties we required of her without any tax whatever on her. The duties we did require was no test of what her physical condition was because we required practically no duties of her; I couldn't say from my observation, such as it was, such as I had an opportunity to make, I wouldn't say she was not suffering from tuberculosis; I made no examination of her at all.

(Testimony of Dr. Ernest B. Thompson)

DR. ERNEST B. THOMPSON

testified as a witness on behalf of the defendant by deposition as follows: I am a physician and a graduate of the Vanderbilt University Medical Department and have practiced my profession continuously for twenty years. Concerning this paper which you hand me, that is a physical examination of Frances Hill, a beneficiary of the Veterans Bureau made by me on August 15, 1921. The paper consists of two pages. I have no personal recollection of the patient. It appears from the evidence in this case that the plaintiff, Frances Hill, was a trained nurse and had worked for the United States Government during the war as such. In my opinion at that time I don't believe she could have followed that line of endeavor, she might have taken a position as secretary to somebody, a clerical position of some kind. I have put my initials on the back of each of those two pages handed me, and labeled them Exhibit "A" and Exhibit "B". (The instruments were received in evidence.)

CROSS EXAMINATION

The date of that examination was August 15, 1921; I haven't examined her since that time; I made just the one examination. I found that she was suffering from a quiescent tuberculosis; I would class it as such. I did not find any moisture in the lungs at that time. Both lungs had been involved; there had been a tubercular infection in both lungs. As to the condition of her heart at that time, this was a special tuberculosis examination, and, if any examination of her heart was made at that time, it was evidently negative, or some note would have been made of it. It might be possible that myocarditis very frequently develops secondarily in a person suffering from

(Testimony of Elizabeth Schmidle)

tuberculosis, from the toxin of tuberculosis, but myocarditis develops from other things more frequently than tuberculosis. Sometimes, it is a fact, it is a complication of a long continued tuberculosis. I don't recall noting any special condition of her heart. I made no examination of the sputum at that time. I do not know whether or not she was running any temperature. I don't remember at what time of day it was when I made that examination. I never treated her, I just made the examination that I was requested to make.

REDIRECT EXAMINATION

I identify the exhibits handed me by my signature.

ELIZABETH SCHMIDLE

testified on behalf of the defendant by deposition as follows: I first met plaintiff at the Miami Inspiration Hospital at Gila County, Arizona, in June or July 1922 when plaintiff was a nurse for that institution; at the time I also worked there as a nurse on general duty. Plaintiff's salary while working at the Miami Inspiration Hospital as a nurse was \$85.00 per month; as far as I recall plaintiff's services were satisfactory. I came in frequent contact with plaintiff and as far as I know plaintiff worked every day and was in good health during the period of her employment. I don't know why she left the employment of the hospital. She was not discharged, I remember that. She left of her own free will.

CROSS EXAMINATION

The records of the Miami Inspiration Hospital disclose that plaintiff was employed there around four or five weeks. She quit the employ of her own free will; I don't know why she quit.

(Testimony of Dr. Fred G. Holmes)

DR. FRED G. HOLMES

testified on behalf of the defendant by deposition as follows: I am a physician and a graduate of the University of California and Harvard Medical School, class of 1918; I have practiced my profession continuously since 1918 with the exception of the last eight months during which time I have been sick. I have specialized in diseases of the chest since 1921. I had occasion to examine Frances Hill.

(The doctor was handed what purported to be a photostatic copy of a physical examination and report of Frances Hill, dated February 15, 1923 for the purpose of refreshing his recollection.)

The photostatic copy of report of physical examination reflects my signature and I made a physical examination on February 15, 1923 and I found that she was a well-developed and well-nourished young woman. Her color was good. Her eyes, ears, nose and throat were negative. Normal, that means. The heart was not enlarged, regular, and no murmurs. The abdomen was negative. With particular reference to her chest, which was the thing that was under question, I found her chest to be well-shaped, with normal ability on both sides. The fremitus or reaction to the spoken voice was normal. Her right lung under percussion showed a slight decrease in resonance to the second rib and third vertebral spine. This lung also showed broncho-vascular breathing and increased whisper over the area described above. There were no rales before or after cough. The left lung at that time showed a slight decrease in resonance at the

(Testimony of Dr. Fred G. Holmes)

apex with a prolonged expiration over the hilus near the sternum and at the apex. No rales were heard before or after cough. My conclusions were that she had a slight old infiltration of both apices, most marked on the right side, without evidence of active tuberculosis at that time. Her weight on examination at that time was 147 pounds. Her normal was 140 pounds. My diagnosis on her was that she had a chronic pulmonary tuberculosis, incipient or minimal, and arrested, with a prognosis which I considered good. At the time I made that physical examination I considered that she could carry on the practice of the profession of nursing; in other words, it was my thought that it wouldn't have any effect upon her health one way or another. (The photostatic copy referred to was marked defendant's Exhibit No. 1 for identification.)

(The doctor was handed what purported to be a photostatic copy of a physical examination and report of Frances Hill, dated July 26, 1923.) I made a physical examination of Frances Hill on July 26, 1923. I found that she was a well-developed and well-nourished young woman apparently not in ill health. The eyes, ears, nose and throat were negative. The heart was not enlarged, regular, and had no murmurs. The abdomen was negative. I stated in my examination that she complained of a rise in temperature in the middle of the morning. I had made my examination of her in the afternoon, and in order to check this rise of temperature in the morning, I made an appointment with her at 9:30 in the morning for several mornings but she did not return. She was supposed to have returned when I could check her temperature at 9:30 in the morning, when she

(Testimony of Dr. Fred G. Holmes)

stated that her temperature was elevated, but she did not appear for her appointment. I found on the examination that with regard to the lungs that her chest was broad and well-shaped, with normal mobility. The fremitus or reaction to the spoken voice was normal. There was a decrease in the resonance to the second rib and the third vertebral spine on the right side, with broncho-vesicular breathing and increased whisper over a like area. There were no rales before or after cough. Over the left lung there was a decreased resonance to the second rib and the third vertebral spine, with an increased whisper over the hilus or root. There were no rales before or after cough. And my conclusions were that there was a slight amount of infiltration over both apices without evidence of activity, and my diagnosis being a chronic pulmonary tuberculosis, incipient, or minimal, arrested. The time of the examination was 4:15 P. M., at which time her temperature was 98.2 degrees Fahrenheit; her pulse, 72 per minute; her weight, 145, as against a normal of, as she stated, 143. That photostatic copy of physical examination and report reflects my signature and I signed that at the time I made that physical examination. (The photostatic copy referred to was marked Defendant's Exhibit 2 for identification.)

(The doctor was handed what purported to be a photostatic copy of a physical examination and report made of Frances Hill October 31, 1923.) I made a physical examination of Frances Hill October 31, 1923 and that physical examination and report reflects my signature. The findings at that time are not in my handwriting, that being a Board of three examiners, all of us examin-

(Testimony of Dr. Fred G. Holmes)

ing, but the handwriting is in one of the other examiners, Doctor—I wouldn't like to state whether it was Dr. Tuthill or Dr. Warner. It was a Board of three in which we all took part in the physical examination and one of the *member* of the Board acted as recorder at that time and we all signed the report. Those findings which are on that physical examination and report are the findings which we made at that time. We found her to be very well developed and nourished. She had a scar of a thyroidectomy, but no symptoms of any hyperthyroidism. There was no other pathology found, no other general pathology. The chest examination showed: A normal shape, normal mobility, normal fremitus; right lung, to percussion, normal; to auscultation, normal; left lung, normal to percussion and normal auscultation. The X-ray findings were made by the laboratory. I did not make the readings of the X-rays, this reading was made from the laboratory. Well, I may omit that then. Our remarks regarding the case were, that if this patient ever had pulmonary tuberculosis, it has left no positive signs; and our diagnosis was, no pathology; the meaning of "pathology" is, well, no diseased process. (The photostatic copy referred to was marked Defendant's Exhibit 3 for identification.)

Referring to Defendant's Exhibit 3 for identification, this Board of three medical examiners who took part in this physical examination and report under date of October 31, 1923 took into consideration the X-ray findings, as well as the physical findings and report. In answer to the question whether the combined X-ray report and the physical findings showed that there was no pathology, we took into consideration the X-ray re-

(Testimony of Dr. Fred G. Holmes)

ports, but, of course, we had the X-ray pictures, which we ourselves looked at, and from which we ourselves drew our own conclusions. We made an independent reading of those X-ray pictures. As to whether we relied upon the laboratory report, it is the invariable rule to read these pictures independently, and we always did that, and we did that in this case. Referring to Defendant's Exhibit No. 2 for identification, it is every bit in my handwriting. Referring to Defendant's Exhibit No. 1 for identification, it is every bit in my handwriting. Referring to each of the three physical examinations which I made of Frances Hill, and the reports which have been marked Defendant's Exhibits 1, 2 and 3, I felt that the occupation of nursing wouldn't have any effect upon the health of Frances Hill at any time during the times those physical examinations and reports were made.

CROSS EXAMINATION

Referring to Defendant's Exhibit 3 for identification, as to whether those findings are my own findings or merely a majority of the three doctors decided on those, those findings are my own findings. I couldn't say if I examined the X-ray pictures myself from which I based my conclusions because I don't recall. I would say what our custom was, and I wouldn't examine a patient without the films, and inasmuch as they were taken I would say that was our custom, but I wouldn't know with reference to this particular case. I don't remember whether I did in this particular case or not. When I first treated Frances Hill, as to the symptoms she had, I will have to refresh my memory because I put those

(Testimony of Dr. Fred G. Holmes)

down in my own handwriting; I would like to have No. 1 if you are going to speak of No. 1, because I have to refresh my memory. I can use each of those to refresh my memory. As to tired feeling, not mentioned; loss of weight, she was more than her normal weight; night sweats, not mentioned; rapid pulse, not mentioned, but her pulse was 72 on examination; loss of appetite, not mentioned; cough, yes; nervousness, not mentioned; weakness, not mentioned; lack of endurance, not mentioned; expectoration, not mentioned; spitting of blood, not mentioned; tickling in throat, not mentioned; hoarseness, not mentioned; pain in chest or shoulders, yes, pains in left side when she caught cold and was tired; malaise, not mentioned; frequent and severe colds, not mentioned; did she have a lung hemorrhage, not mentioned. When I say, "not mentioned," and whether that means that I didn't examine her for those particular symptoms or it just doesn't appear on the report—her symptoms, which were taken from her were: pains in the left side when catches cold, or pains in left side when catch cold or are tired; have cough in the morning. Those were her symptoms. Whether her face was flushed, I don't have it down, of course. She had no sputum. Her afternoon temperature was not taken. I concluded that these pains were pleurisy that she complained of. No effusion. As to whether there was a dullness on percussion, as mentioned in my description there was a slight decrease—I have covered that—"a slight decrease to the second rib and third vertebral spine on the right, and slight decrease at the apex on the left." There was no evidence of a cavity at any place. With all of these symptoms in mind that I have told about at

(Testimony of Dr. Fred G. Holmes)

the time of my examination, in answer to the question would I have advised Miss Hill to rest or would I have advised her to work, I advised her that she could work. I considered that her physical condition was, and so stated on the record, that she was able to work. As to whether she was able at that time to hold a job for a long period of time, or do I have any knowledge of that, I don't know whether she held a job or not; I thought she could. The best treatment for one suffering from active pulmonary tuberculosis is absolute rest.

REDIRECT EXAMINATION

I found no activity; found the case arrested. My answers to the question with regard to the symptoms, that referred only to defendant's Exhibit No. 1 for identification. There were other symptoms mentioned in the others, I think. You asked about only one of them, you see.

RECROSS EXAMINATION

I thought she did not show any signs of active tuberculosis at any time she was under observation. Referring to this list of symptoms generally, she complained of other symptoms on the examination of July 26, 1923, but they were merely complaints.

REDIRECT EXAMINATION

Of the symptoms as set out or read to me by counsel for the plaintiff, many that he mentioned were objective, such as hemorrhaging, temperature, flushed cheeks. However, the others mentioned, such as pain, malaise, are subjective symptoms, and the only way you can find anything about them is by asking the patient. That is what is meant by a subjective symptom.

(Testimony of George A. Simms—Melba Frazer)

GEORGE A. SIMMS

testified on behalf of the defendant by deposition as follows: I am a clerk employed at the Phoenix Indian School Sanitarium at Sixteenth Street and Indian School Road, Phoenix, and as such I have in my possession personnel records pertaining to Frances Hill; I do not know Frances Hill; and the only thing I know about this case is what is contained in those records; I am merely the custodian of those records. After refreshing my recollection from the personnel record (which record was marked Defendant's Exhibit No. 4 for identification) I find the record shows that Frances Hill was appointed January 1, 1923 in a temporary position and that she was separated from the payroll on July 31, 1923; that plaintiff received a salary of \$840.00 per annum, plus the bonus of \$240.00 during her employment; that in addition to the salary, plaintiff was furnished with a room with heat and lights.

MELBA FRAZER

testified on behalf of defendant by deposition as follows: I am a stenographer employed at the Phoenix Indian School, Phoenix, Arizona, a United States Government institution, and in such capacity am custodian of the personnel records pertaining to plaintiff's employment at that institution between November 8, 1924 and February 21, 1925. Plaintiff received a probational appointment as a trained nurse at the Phoenix Indian School on November 8, 1924, at a salary of \$1500 per year with a deduction of \$10.00 a month for subsistence; the position to which

(Testimony of Florence L. Hicks)

plaintiff was appointed came under the classified Civil Service, and salary checks in payment of plaintiff's employment were issued in the following order: December 1 to 30, \$112.15, deduction for subsistence \$2.87; January 1 to 30, \$112.13, deduction for subsistence \$2.87; February 1 to 21, \$78.49, deduction for subsistence \$2.01.

FLORENCE L. HICKS

testified on behalf of the defendant by deposition as follows: I have resided in Phoenix, Arizona, since November 1923, and since October 9, 1929 have been registrar for the Nurses' Official Registry, sponsored by the Arizona State Nurses' Association of District No. 1, Maricopa County, Arizona; prior to the time I became registrar for the Nurses' Registry I did private duty nursing in Phoenix, Arizona; I first became acquainted with plaintiff in the year 1926, and I occasionally worked on the same case as plaintiff; at the time of meeting plaintiff in 1926 I was on twelve hour day duty, and plaintiff relieved me working twelve hour night duty on that case; on that particular case the patient died shortly after plaintiff reported on duty. I worked on several other cases with plaintiff during the period from 1926 until 1929, when I became connected with the Nurses' Registry. Plaintiff worked with me off and on during that period. I remember one year that plaintiff was employed at St. Luke's Hospital for a short time.

Witness produced a written application for employment filed by plaintiff with the Nurses' Registry and said document was received in evidence as defendant's Exhibit F and reads as follows:

(Testimony of Florence L. Hicks)

ARIZONA STATE NURSES ASSOCIATION

District No. 1

NURSES OFFICIAL REGISTRY, Inc.

Phoenix, Arizona.

APPLICATION FOR MEMBERSHIP

(Read registry rules before filling out this blank)

1. Name in full (Miss) Frances Hill
2. Present address 2338 N. 9th St.
Home address Same
Telephone Number 32821
3. Year of birth 1894
Place of birth Batesville, Ark.
4. Height 62-1/2 inches Weight 145
Religion Protestant
5. Are you married No
6. If married, give maiden name
7. What is the condition of your health? Good
 - (a) Have you any physical defects? No
 - (b) What communicable diseases have you had?
Measels, whooping cough, mumps.
 - (c) Have you any tendencies to constitutional or
pulmonary trouble? No
8. From what school of nursing are you a graduate?
St. Vincents Inf.
Give location Little Rock, Ark.
Date you finished April 1, 1915

(Testimony of Florence L. Hicks)

(b) Length of course when you graduated? Two years, six months.

(c) Affiliation, if any?

9. Character of hospital: General
10. Daily average number of patients in hospital during training. 250
11. Name of present Director of school of nursing.
12. Name of Director of school of nursing at the time of graduation. Sister Bernard.
13. Postgraduate of what school. Location
Length of course Date
14. Are you a registered nurse? Yes
In what states? Ark., Ariz.
Reg. No. 493
15. State how, where and for what period of time in each instance you have been employed since graduation? Private duty.
16. Has the state in which you graduated registration for nurses? Yes.
(a) Do you agree to apply for registration at the next State Board Meeting?
17. Would you consider an institutional position, if so, state kind and in what locality? No.
18. Will you take all classes of cases? No.
(a) Have you a preference? Yes.
(b) State those that you register against. O. B., D. T., Mental, Barlow-Brown
19. Do you keep a chart on every case? Yes.

(Testimony of Florence L. Hicks)

20. What language, if any, do you speak, besides the English? None.
21. Have you a general understanding of dietetics and general housekeeping? Yes.
22. Name educational institutions attended before entering School of Nursing, state number of years in each, and from which you are a Graduate.
- (b) Have you supplemented this at any time by systematic study? Along what lines?
23. Are you a member of your alumnae? No.
District? No Red Cross? Yes.
24. Do you understand that in signing this blank you accept the rules and regulations of the Registry, the schedule of prices as given in the rules, and that you will give it your loyal support? Yes.

Signature Frances Hill

Date: 10-5-29

For registry dues make checks payable to the Nurses Official Registry. For First District dues make checks payable to First District of the A. S. N. A.

Dues for Membership in First District \$6.00; dues for the Registry, from Oct. 1st to Oct. 1st, \$15.00; payable in advance. From April 1st to Oct. 1st, \$10.00; payable in advance. July 1st to Oct. 1st, \$5.00; payable in advance.

(Testimony of Florence L. Hicks)

Witness produced a card record from the Nurses' Registry showing cases to which plaintiff was assigned from October 10, 1929 to August 31, 1930, and after refreshing her recollection therefrom testified: On October 10, 1929, plaintiff was assigned on a case at the Good Samaritan Hospital by Dr. Drane. The card record produced was received in evidence as defendant's Exhibit O which record showed the dates of registering and the dates of assignment between October 10, 1929 and August 31, 1930, as follows:

NURSES' OFFICIAL REGISTRY
ARIZONA STATE NURSES' ASS'N.

Dist. No. 1

Date	Patient	Address	Case	Physician
1929				
10-10		Good Sam.	Med.	Drane
10-14	Mrs. Brown	St. Joseph	P. O.	Sweek
10-20	240	" "	Extraction	Borah
10-23	226	" "	Surg.	Tuthill
		To Calif. c pt.		
		To St. Luke's		
1930				
2-7	204	Good Sam.	Accident	Goodrich
2-21	Rhodes	105 W. Merrell	Med.	Drane
2-28	217	St. Jo.	Surg.	Tuthill
4-25	St. Luke's			
5-4	244	St. Jo.	Med.	Koler
6-7	260	" "	Surg.	Smith
6-22	415	Good Sam.	Med.	Bakes
7-18	320	" "	Surg.	Shupe
8-31	Magna Copper Co. Hosp.,		Superior, Arizona.	

(Testimony of Florence L. Hicks)

1929	Reg.	Ass'gd.	Re-Reg.	Re-Ass'gd.
	10-10	10-10	10-14	10-14
	10-15		10-18	10-23
	10-30		12-30	
1930	1-27	2-7	2-16	2-21
	2-22	2-28	4-20	4-25
	4-25	5-4	5-7	6-7
	6-10	6-22	7-5	7-13
		7-18	7-25	

Prior to the time that I took over the Nurses' Registry in 1929 I worked on several cases with plaintiff in which I would work one twelve hour shift and plaintiff the other twelve hour shift. I usually worked the night shift and plaintiff worked the day shift, inasmuch as I had registered for night duty only. I would estimate I worked on six or eight cases with plaintiff from the time I met her until the time I took over the Nurses' Registry. Plaintiff was never on call for duty by the registry after August 31, 1930. Although I can not remember the exact date, or the year that I last saw plaintiff it was at a bridge party and another woman drove both of us home, and at that time I did not notice anything peculiar about the manner in which plaintiff breathed.

(Testimony of Florence L. Hicks)

At this stage of the trial Government's Exhibits B, C and D were read in evidence as follows:

EXHIBIT B

Date Received
November 26, 1920

Mr. W. F. Doughty,
District Vocational Officer,
Dist. 14,
Dallas, Texas.

Dear Sir:

A. I desire to begin a course of training under Section 2 on Dec. 1st, 1920, provided a medical examination will show my physical condition will permit me to do so, and that my tuberculosis is apparently arrested at that time.

Name Frances Hill
Address Gen. Del. El Paso, Tex.

11/24/20

I have this day been examined for Vocational Training, Dr's report is that I have been arrested case for some time.

Frances Hill

(Testimony of Florence L. Hicks)

EXHIBIT C

NON-APPORTIONED SERVICE
 BC 717
 REFERENCE BEARING TESTIMONY OF S. O. HICKS
 FORM 3415
 USE IN lieu of Form No. 1151, or 2700
 DATE, 1924
 REFERENCE 88,000 PRECEDENCE 3-1-23
 RECEIVED
 REG. EXT. DEPT. OF COM.
 DIVISION OF INVESTIGATION
 NUMBER 268653
 PERCENTAGE 78.9
 APPLICATION NUMBER 15083329

UNITED STATES CIVIL SERVICE COMMISSION APPLICATION FOR EXAMINATION

NOTE—The applicant must mark ALL blanks in the two columns below in the correct line. Failure to do so may prevent examination.

Kind of examination Graduate Not
 Place of examination Newport Ark (City) (State)
 Date of examination May 28-29 1924
 (Place and dates of examinations are given in announcements.)
 (The address given below will be treated as the applicant's post-office address until notice, in writing, of any change is received.)
 (PRINT first name in full, middle initial or initials, if any, and surname in full. If a woman, prefix Miss or Mrs. Use surname EXACTLY as signed at the end of this application, inside.)
 Name Miss Florence L. Hicks
 Number and street _____
 City, Town, _____ Newport
 Post office _____
 State or Territory _____ Ark

Residence: State of Ark
 County of _____
 Date of birth Jan 7 1888 (Age on last birthday) 35
 Height 5 ft 2 in Weight 125 lbs.

APPLICANT WILL NOT FILL THE FOLLOWING.
 Application _____ approved _____ 1924
 By whom _____ approved _____ 8/5/24
 Admitted to examination _____
 Notified of standing Aug 18 1924
 Entered roster _____

78 ans

NOTICE TO APPLICANTS.—Any false statement in an application, or alteration of a voucher or certificate, or the presentation to the Commission of a paper containing such false statement or alteration, is a violation of the law and punishable as such.

IMPORTANT INSTRUCTIONS.

1. Use this blank only when specified in examination announcement.
2. Answer ALL questions fully in ink.
3. Remember that ALL your answers are under oath.
4. Avoid reference to religion, politics, or fraternal orders.
5. There must be no discrepancy in statements made, or in manner of writing your name throughout application and in "Officer's Certificate."

TO THE UNITED STATES CIVIL SERVICE COMMISSION, WASHINGTON, D. C.:
 I, the undersigned, hereby apply to be admitted to the examination named above, intending to accept appointment if selected.

7. Do you claim a citizen of the United States?	Date of birth (give month, day, and year)? Application can not be examined unless U. S. citizen. The answers to these two questions must be consistent.	Age on LAST birthday? (citizens and within proper age limits must be consistent.)	Place of birth (Foreign-born citizens must prove citizenship. If native, show State or Territory; if foreign born, show country.)
<u>Yes</u>	<u>Jan 7 1888</u>	<u>35 years</u>	<u>Batonville Arkansas</u>

It is important that Questions 2 and 3 be fully, yet concisely, answered. If more space is required, an additional sheet may be attached, but it should be securely fastened to the second page of this form. In answers to questions relative to time, give the date and period of time in years and months as accurately as possible.

(a) Where you have attended school, give a detailed statement of your education, including dates:

Elementary school	High school	College or university
From <u>1894</u> to <u>1901</u>	From <u>1901</u> to <u>1912</u>	From <u>NO</u> to _____

Name and location	Name and location	Highest grade completed	Did you graduate? (Answer "Yes" or "No.")	Name and location	Number semester hours credit received.	Degree conferred.	Major subject.
<u>Newport Ark</u>	<u>Newport Ark</u>	<u>10th</u>	<u>no</u>				

(b) If you have pursued any postgraduate courses of study, state fully what studies and when, where, and for what length of time they were pursued.

3. Submit a complete statement of your experience. State when (with dates), where, and by whom you were employed, the compensation received, and the specific nature of your duties in each case. Every line of work in which you have been employed must be included in your statement.

Graduated from St Vincente Emp. Training School for girls Little Rock Ark. 1915. April 10, 1916. private photo engraving for Ben W. H. Curry, J. P. Curran, W. H. Mullin of Little Rock Ark. Salary \$10. per day. till March 23-1918. went to U.S. Army. spent 2 months eyes dead, on a. p. c. salary \$10 per month upon board and laundry for the post two years. have been general hospital messanger. I washed the uniforms for Capt. Wallace Reddick, ariz, 90. per month 7 months and for S. B. Winstanley, Snyderd ariz, 90. per month

(c) What is the lowest minimum salary you would be willing to accept? 80. per month
 (d) What is the highest maximum salary you would accept? 100. per month

(Testimony of Florence L. Hicks)
EXHIBIT C (Continued)

5. Have you now or have you ever had any of the following diseases? (Answer "Yes" or "No" to each inquiry, in case answer is "Yes" describe fully under question 6.)

Table with columns for various medical conditions: Vision in either eye, Any defects of hearing in either ear, Any defect of speech, Any injury, deformity, or defect of hand, arm, foot, or leg, Fallen or misplaced arch of foot, Tuberculosis in any form, Asthma or shortness of breath, Any chest, lung, throat, mouth, or nasal disease, Any skin eruption, Tumors, sores, ulcers, enlarged veins, Rheumatism, Paralysis, Piles, Rupture, If ruptured, is rupture retained by well-fitting truss?, Difficult urination - immoderate flow of urine: bladder or kidney disease, Are you subject to headache - severe, protracted, or frequent?, Convulsions or fits, Nervous exhaustion or mental derangement, Palpitation or any disease of the heart, Dyspepsia, Do you wear glasses?

6. Describe fully here all diseases, disabilities, defects, or infirmities which you now have or may have had in the past. If suffering from same at present, so state; if not, state when and for what length of time.
Answer: I have following: "I" in 1918, Compensation from Government discontinued last month 1922. No symptoms during that year.

7. (a) Were you ever in the U. S. military or naval service? (Answer "Yes" or "No," and see note below.)
In what company and regiment, or on what vessel, or where else? (Do not give service in militia.) (Give exact name of unit which enlisted and discharged.)
Answer: None served. (Civil) France will

Table with columns for military service: Discharge (Warranted, Discharged, Enlisted, Discharged), and Was enlistment in each case terminated by honorable discharge? (If answer to "No," state how.)

Note: - If you are the widow of a soldier, sailor, or marine, and were not divorced from him, and have not remarried since his death, or if you are the wife of a dishonored soldier, sailor, or marine, fill out the answers to Questions 7a and 7b to show the service of your husband.
An honorably discharged soldier, sailor, or marine should submit his certificate of discharge or a photograph or certified copy thereof, unless he has already been allowed preference by the Commission, in which case he should submit the notice of allowance of preference. If the applicant has been pensioned or compensated, or has received training under the Veterans' Bureau, he must also submit his certificate to that effect. Papers submitted will be returned.

8. What has been your place of abode and principal business or occupation for each of the past four years?
Year 1922: Place of abode Little Rock, Ark., Occupation Nurse.
Year 1921: Place of abode Little Rock, Ark., Occupation X-Ray Work.
Year 1920: Place of abode Mesa, Ariz., Occupation Nursing.
Year 1919: Place of abode Phoenix, Ariz., Occupation Book Binding.

9. Are you now in the employ of the U. S. Government? (Answer "Yes" or "No.")
If your answer is "Yes," state where and in what position.

10. (a) Were you ever employed in any branch of the U. S. Government? (Answer "Yes" or "No.")
If employed, was your appointment permanent or temporary?
If permanent, either permanently or temporarily, fill in the answers to the following questions concerning each period of your employment by the Government:

Table with columns: In what department or service were you employed?, In what city or town were you employed?, Date of employment, Did you voluntarily resign?, Were you discharged?

11. (a) Have you ever had an application with this Commission or its representatives for any branch of the U. S. Government service?
(b) If so, give the names of the individuals interested regarding each examination.
Name each position for which examined or for which application was filed, To what city were you, or are you to be, examined?, Give the date of each examination (Month and year), Did you pass? (Answer "Yes" or "No.")

(If you passed only one part of the combined stenographer and typist examination, indicate in above answers the part in which you passed.)

12. Have you ever been barred from examination by this Commission? If so, when and for what reason? (Give the date, place, and kind of examination (or which you applied) and in connection with which you were barred.)

13. Have you ever been discharged from a position under the U. S. Government or under a State, county, city, or local government, or from a State employment?
If so, state when and when you were employed and give the name and address of your employer and the reasons for your discharge in each case.

14. (a) Have you ever been arrested or charged with any offense against the laws of the United States or have you ever been confined, or been fined or convicted on account of any misdemeanor or offense? (Answer "Yes" or "No.")
(b) Have your answers to (a) above cover all cases wherein arrested? (Answer "Yes" or "No.")

15. (a) Have you ever been arrested or charged with any offense against the laws of the United States or have you ever been confined, or been fined or convicted on account of any misdemeanor or offense? (Answer "Yes" or "No.")
(b) Have your answers to (a) above cover all cases wherein arrested? (Answer "Yes" or "No.")

Table with columns: Wine, Beer, Other intoxicating liquors, Opium, morphine, or other narcotic drug.

(Testimony of Florence L. Hicks)

EXHIBIT C (Continued)

16. Give the names and addresses of five persons, preferably employers, who have knowledge of your character, experience, and ability.
- | NAMES. | ADDRESSES. |
|---|-------------------|
| (1) Dr. W. S. Miller, Little Rock, Ark. | 7th & Main St. |
| (2) Dr. J. P. Ramsey, St. Louis, Mo. | Little Rock, Ark. |
| (3) Dr. J. W. Elthcott, Federal Bureau Bldg., Fed. Bldg. East, Wash. D.C. | |
| (4) Dr. S. W. Long, Long's Garage, Wash. D.C. | Ed. P. Post, Tex. |
| (5) Dr. A. J. Wheeler, East Farm Lane, Phoenix, Ariz. | |

17. (a) Are any members of your family or relatives (either blood or by marriage) in any part of the U. S. Government service whatsoever? (Answer "Yes" or "No.") **No**

If so, furnish the information required below in regard to all such relatives.

Name.	Post office address.	Position and department or office in which employed.	Isolation ship.	Married or single.
Street and No.		Position		
City or town.		Department or office.		
Street and No.		Position		
City or town.		Department or office.		
Street and No.		Position		
City or town.		Department or office.		

- (b) Does your answer above cover all your relatives in the U. S. Government service? **Yes**
- (c) Indicate here which, if any, of the persons named above are temporarily employed.
- (d) Indicate here which, if any, of the persons named above live in the same household with you.
- (e) Indicate here which, if any, of the persons named above are less than 21 years of age.

18. In what State or Territory have you actual bona fide residence?

Length of such residence therein? (Residence must be shown up to date of jurat.)	In what county have you actual bona fide residence?	Length of such residence in county? (Residence must be shown up to date of jurat.)
Arkansas, From May 1, 1924, to May 26, 1924 (Month) (Year)	Jackson Co.	From May 1, 1924, to May 26, 1924 (Month) (Year)

19. If you have not resided continuously in the State or Territory in which you claim actual bona fide residence, or are not now actually living in such State or Territory, answer the following questions fully. (If more space is required, attach statement to application.)

(a) For what periods have you been absent therefrom, giving dates?
 From 1-1-19 I went to Ed. Post, Tex. Since that time have only spent a few months at a time in Arkansas, but Newport Ark. is my home.

(b) Where were you and what was your occupation during such time?
 Ed. Post, Tex. nursing, & Roy Wash Globe, Ariz. nursing, Phoenix, Ariz. nursing.

(c) What are your intentions as to returning to the State or Territory in which you claim actual bona fide residence?
 I intend to return to the place I call my bona fide residence.

(d) What are the facts on which you base your claim to actual bona fide residence in the State or Territory claimed?
 My mother, brothers and sisters live here and I am the state.

(e) What is the name, address, and relationship of the person, if any, with whom you make your home at the present time in the State or Territory in which you claim bona fide residence?
 Brothers, J. B. Still

(f) Are you now a voter in such State or Territory? (Answer "Yes" or "No.")
 No

(g) If you are under 21 years of age, furnish actual bona fide residence and the post office address of your parent or parents, or your guardian:

Bona fide residence of parents or guardian.	Length of such residence.	Post office address.
County, State	From (Month) (Year) to (Month) (Year)	City or town, State

20. Are you now married? (Answer "Yes" or "No.") **No**

Were you ever married? (Answer "Yes" or "No.") **No**

If a married woman, where is your husband's actual bona fide residence? (Name county and State.)

I solemnly swear that the answers I have made to each and all of the foregoing questions are full and true, to the best of my knowledge and belief. So HELP ME GOD.

(Signature of applicant) **Miss. Frances Still**
 (Sign your last name in full, your middle initial or initials, if you have any, and your surname in full.)

NOTE—Your name, EXACTLY as above, and post-office address must be PRINTED in the space thereon on the first page of this blank. Failure to do so or to attach sufficient postage to the envelope when forwarding your application may prevent your examination. If you write to the Commandant, or when signing descriptions of applicants, if appointed, use some name EXCEPT "I". Do not omit Jurat or Oath's Certificate (if required) on page 4. Medical Certificates not required unless called for in announcement.

(Testimony of Florence L. Hicks)

EXHIBIT D

UNITED STATES OF AMERICA
GENERAL ACCOUNTING OFFICE

Pursuant to the Act of June 10, 1921, 42 Stat. 24, I hereby certify that the annexed documents, numbered 1-1 to 1-4 inc., 2-1 to 2-4, inc., 3-1 to 3-4, inc., 4-1, 4-2, 5-1, 5-2, 6-1 and 6-2, are true copies of the official documents now on file in the General Accounting Office in the following case:

Accounts of John B. Brown.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the General Accounting Office to be affixed this 17th day of July, in the year 1935, at Washington.

(SEAL)

R. N. Elliott

Assistant Comptroller General
of the United States.

EMPLOYEES AT PHOENIX INDIAN SCHOOL
Phoenix, Arizona.

Certified for increase of compensation during the fiscal year, 1923

Name	Position	Salary	Effective Date of increased Compensation
Hill, Frances	Nurse	\$840.	Jan. 1, 1923.

(Testimony of Florence L. Hicks)

I recommend the employees named in the foregoing list for increase of compensation during the fiscal year 1923, as provided by law, and hereby certify that they possess the ability and qualifications which justify their receiving such increases. I further certify that they possessed such ability and qualifications on dates shown, or at the time of their entrance upon duty, if subsequent to that date.

Feb. 5, 1923.

John B. Brown
Superintendent

Certificate issued February 27, 1923,
Bureau of Indian Affairs
General List I. O. No. 25
Item No. 22

PAYROLL OF EMPLOYEES EMPLOYED AT THE PHOENIX INDIAN SCHOOL

Name	Occupation	Time Employed	Amount Paid	
Hill, Frances	Grad. Nurse	Jan. 1 to Mar. 31	\$245.00	
		Apr. 1 to June 30	\$245.00	
		July 1 to July 31	\$ 81.66	
		Sept. 16 to Sept. 30	\$ 57.50	
			After	
			Ded. Sub.	
		Oct. 1 to Oct. 31	\$115.00	
			After	
			Ded. Sub.	
			Jan. 1 to Jan 31.	\$112.13
	After			
	Ded. Sub.			
	and			
	Retirement.			

(Testimony of Dr. E. Payne Palmer)

DR. E. PAYNE PALMER

testified on behalf of the defendant by deposition as follows:

I have resided in Phoenix, Arizona, for the past 36-1/2 years; that he is a surgeon and have practiced my profession continuously since April 13, 1898; I am a graduate of Barnes Medical College, St. Louis, Missouri. I first made a physical examination and treated plaintiff professionally on April 20, 1927; upon my examination the major findings were chronic gall bladder inflammation, and a chronic appendix inflammation; plaintiff had a mild fibrosis, or scarring in the lungs and a colitis. The lung scarring indicated a healed condition from some disease process, and the colitis usually results from some disturbance of the digestive tract when it occurs along with a chronic appendix or gall bladder and appendix inflammation. Inasmuch as plaintiff had both a chronic gall bladder and appendix inflammation I concluded that those conditions were responsible for the colitis. I recommended to plaintiff that she have an operation for the removal of the appendix and the gall bladder, if she felt that her symptoms were severe enough to justify the operation. I operated on plaintiff on April 25, 1927, at the Good Samaritan Hospital, Phoenix, Arizona, and removed her appendix and gall bladder. A general anesthetic was administered to plaintiff consisting of nitrous oxide to start, after which ether was used. I was present the entire time during the administration of the anesthetic. In my examination of plaintiff I ordered laboratory examinations of the blood, gall bladder, the digestive tract, and a uranalysis was made; a physical examination and X-ray

(Testimony of Dr. E. Payne Palmer)

examination was made of the chest. The operation took about an hour and ten minutes which included the time to anesthetize, preparatory to the operation. Plaintiff made a very satisfactory recovery and advised that she was well enough to go home after remaining in the hospital six days, following the operation. They usually stay in the hospital two weeks for that type of operation. As to whether I would administer a general anesthetic in connection with a surgical operation where one had a lung condition would depend upon the degree of the lung involvement.

CROSS EXAMINATION

I personally examined the X-rays made of plaintiff's chest, and also accepted the opinion of the radiologist in arriving at my conclusion that the X-ray showed mild fibrosis in the lungs. In making my examination of plaintiff's chest it consisted both of a stethoscopic examination and X-ray findings; plaintiff's heart was listened to through the stethoscope to determine the sounds and its size; an X-ray was ordered of the lungs particularly because her case history showed that she stated she had had a cough at one time. I do not recall that she was coughing at the time of the examination. I was assisted in my examination and operation by Dr. Brockway, at the request of plaintiff. In the examination of plaintiff's chest I did not discover anything wrong with her heart.

REDIRECT EXAMINATION

So far as my examination of plaintiff, her heart was normal at the time I examined her.

At this stage of the trial the following proceedings took place:

MR. FOOKS: As I stated before, there are seven other depositions which I understand it has already been stipulated they are deemed to have been read in evidence.

THE COURT: The depositions which have been taken on behalf of the plaintiff but have not been introduced in evidence by her shall be deemed to have been introduced on behalf of the defendant and read it into the record.

MR. FOOKS: And they may be referred to by either side in the argument or summing up.

MR. GERLACK: You are referring to the relatives, a sister and brother-in-law.

THE COURT: The depositions, the list of which was given to me yesterday.

MR. FOOKS: Not all relatives, by the way; Dr. McGill and three or four others.

THE COURT: These different exhibits are deemed to have been read into the record, as I understand it, or are you going to take time now.

MR. FOOKS: No, I was going to save time now, because they are quite lengthy.

The testimony of the witnesses in the depositions above referred to are as follows:

(Deposition of Dr. A. G. McGill)

The deposition of

DR. A. G. MCGILL

taken on behalf of plaintiff was read in evidence by the defendant as follows:

My name is A. G. McGill; my profession is a physician and surgeon; I am a graduate of Tulane University and have practiced my profession at Little Rock, Arkansas, for more than twenty-five years; I have specialized in X-ray and laboratory diagnosis. In February, 1919 after plaintiff's discharge from the Army Nurse Corps, with other physicians, I made a physical examination of plaintiff, including the examination of her sputum and her chest, and I X-rayed her chest. The examining physician found a general tubercular bacilli in the sputum and spots of consolidated lung on both sides, and a very large heart. Plaintiff's pulse was fast and her blood pressure was low; she had moist rales. The examining physicians made a diagnosis of tuberculosis, slight activity, and her heart disease; it was the opinion of the examining physicians that the prognosis was not good. Rest, diet and change of climate was prescribed as the treatment for plaintiff. At the time of my examination in February 1919, a record of the examination was made and someone had procured it two, three or four years ago. After plaintiff had gone to El Paso and remained there for two or more years she came back to Little Rock for several months when I again saw her; at the time of her return to Little Rock her tuberculosis was supposed to have been arrested, but she got bad again and had to go back to a dryer climate; upon her return to Little Rock from El Paso her heart was not any better than it was in

(Deposition of Dr. A. G. McGill)

February 1919. After February 1919, the last time I saw plaintiff was when she returned to Little Rock from El Paso, three or four years later.

At the time I saw plaintiff at St. Luke's Hospital in February 1919, I was the X-ray and laboratory man and believed plaintiff was a patient of Dr. Kirby's, but the plaintiff's case was discussed at a staff meeting. There was a finding of tuberculosis made within thirty days after plaintiff's discharge from the service.

CROSS EXAMINATION

Witness was shown a photostatic copy of a letter dated June 21, 1933, which is a true copy of an original letter prepared by him and bearing his signature. The said letter was marked as Exhibit A and attached to his deposition and reads as follows:

Little Rock, Arkansas

June 21, 1933

COMES A. G. MCGILL AND ON OATH STATES:

That he is a regular physician, graduate of Tulane, 1906, duly licensed and practicing in Little Rock, Pulaski Co., Arkansas, offices in McGill Clinic Building, 505 Rock St;

That on January 20, 1919, he examined Miss Frances Hill, a former Nurse in St. Lukes Hospital, Little Rock, Arkansas, at the time of examination recently discharged from the Army;

That a mitral murmur was heard and that the x-rays revealed a large heart;

(Deposition of Dr. A. G. McGill)

That Miss Hill was not able to do nursing on account of the above conditions.

A. G. McGill

Subscribed and sworn to this 22nd day of June, 1933.

(SEAL)

Jno. S. Gatewood,

Notary Public.

My commission expires 3/3/34

After the witness had the opportunity of reading Exhibit A identified as a letter prepared by him on June 21, 1933, the following proceedings took place:

CROSS EXAMINATION

BY JUDGE HENDRICKS

Q We note it does not say anything about tuberculosis. How does it happen that that was not mentioned?

A Well, it was possibly an oversight by whoever copied the record.

Q The only trouble mentioned in that report is what?

A Heart disease.

Q Does it reflect a serious condition?

A Yes.

Q How serious?

A No better than heart disease. As bad as that condition or worse.

* * *

Q Was there anything about her condition that would reflect that she couldn't follow some other profession for

(Deposition of Dr. A. G. McGill)

which she was qualified like stenographic work or performing office work?

A Well, she might do that.

* * *

Q Now, at the time you examined this lady the second time, which was several years after she first went west, what state was her tubercular condition in at that time?

A She was still like she was at first.

Q I understood there was a recovery.

A It was supposed to have been arrested. She had to go back on account of a cough. I sent her back to the doctor that said she was arrested.

Q It is true that one in that condition can live in the west in some climate and maintain an arrested condition that couldn't live here in Arkansas?

A Yes. He may be able to live out there and not be able to live here.

Q You don't know what her condition was after she went back the second time?

A No, I don't. I have had several letters from her since that time. She said she was about the same.

Q What was her heart condition when you made the last examination?

A About the same.

Q About the same as several years before?

A Yes.

(Deposition of Berniece Ready)

The deposition of

BERNIECE READY,

taken on behalf of the plaintiff, was read in evidence by the defendant as follows:

I am a resident of El Paso, Texas, and have been acquainted with plaintiff since 1921; the period of my acquaintance with plaintiff extends from June 1921 to April 1922, and plaintiff and I had an apartment together for four months. I observed that plaintiff was not able to stand exertion or hard work, and appeared to tire easily. During my acquaintance with plaintiff she had ordinary colds and touches of flu, but I do not remember plaintiff coughing so much. Plaintiff was active socially, but never went to parties where there was dancing, except a few times, as dancing caused her to become very short of breath.

CROSS EXAMINATION

When plaintiff was not working she would usually remain in her apartment and rest until about 5:00 P. M. in the evening when she would dress and meet me at the post-office which was approximately six blocks from the apartment, and we would walk home together. Plaintiff earned from \$4.00 to \$5.00 a day when she worked.

REDIRECT EXAMINATION

I slept with plaintiff all the time that we had an apartment together and was careful about drinking after her because I had just lost a husband who had tuberculosis, and I wondered sometimes if plaintiff was tubercular.

(Deposition of Dr. Frank J. Malloy)

RECROSS EXAMINATION

Plaintiff while working as a nurse sometimes worked at night and sometimes in the day time; the nurses at that time were required to work twelve hour shifts.

REDIRECT EXAMINATION

I have not seen plaintiff for five years.

The deposition of

DR. FRANK J. MALLOY,

taken on behalf of plaintiff, was read in evidence by the defendant as follows: I am a physician by profession, and a graduate of Northwestern University; that I have practiced my profession for fourteen years and specialized in internal medicine, and *has* administered medical aid to persons suffering from tuberculosis. I first met plaintiff in 1926, and have treated her on various occasions between 1926 and 1931. When plaintiff came to me for treatment she gave me a history extending back from the time she was in the Army, and that history was that she had had acute respiratory attacks, consisting of pleurisy, temperature, pains in the chest and cough at infrequent intervals, and that she usually had several attacks during the winter months, but was fairly well during the summer months. It is possible that I saw plaintiff from 1926 to 1931 on an average of two or three times a year, during which time she had attacks such as I have described; that on some of these occasions plaintiff had severe attacks of pleurisy. Plaintiff's subjective symptoms were pains in the chest, general feeling of malaise, spells of tempera-

(Deposition of Dr. Frank J. Malloy)

ture, loss of appetite, loss of weight, and frequent colds. From plaintiff's symptoms and history I have always felt that plaintiff had pulmonary tuberculosis, and I made such a diagnosis. I have always considered that her prognosis should have been good, if she had taken the proper care of herself. I mean by taking care of herself that she should have followed the regular treatment for pulmonary tuberculosis, consisting of rest in bed until all symptoms had completely subsided. I would not have advised her to continue her occupation as a nurse during that time. I did advise plaintiff to have a thorough examination, including X-ray and sputum and blood tests, and after that sanitarium care, consisting of regular rest in bed and hygienic procedure.

CROSS EXAMINATION

The occasion for my becoming acquainted with plaintiff was that she was suffering from acute cold and respiratory affections and consulted me for treatment. To my knowledge plaintiff was following the occupation of trained nurse in 1926, but I do not remember exactly when she stopped nursing. Plaintiff did not follow my advice, except during her acute attacks which attacks lasted from several days to several weeks. I always felt plaintiff's prognosis was good, if she had the proper treatment for the necessary period of time; that plaintiff never had hemorrhages, and in my opinion at the time of her attacks she was having acute exacerbations of chronic low grade, pulmonary tuberculosis.

(Deposition of Dr. C. R. Swackhamer)

The deposition of

DR. C. R. SWACKHAMER,

taken by the plaintiff was read in evidence on behalf of the defendant as follows:

I am a physician by profession and a graduate of Rush Medical College, and have practiced my profession since 1913. I first met plaintiff September 1, 1930, when I examined her chest; that plaintiff's subjective symptoms were shortness of breath on exertion, pain in the region of the left shoulder and front of left upper chest, and occasionally an abnormal temperature of one or two degrees.

As far as the chest is concerned I made no finding, except possibly a little enlargement of the aorta in the left upper chest. At the time of my examination I considered plaintiff's prognosis to be fair, nothing serious, provided she did not attempt to do too much work. I did not make a record of my examination, but the reason for the examination, was that plaintiff was complaining a little. I looked over her chest and took an X-ray picture of it. Plaintiff was under my care for one or two days in February 1931, when she was in bed and not feeling well; plaintiff was not under my care again until March 1, 1931. Plaintiff was head nurse at the hospital with which I was connected, but that her work was not heavy and she did her work all right. After an X-ray was taken of plaintiff's chest I concluded that she had a slight enlargement of the heart, chronic aortitis and chronic myocarditis. I recommended that plaintiff rest and have a blood test made.

(Deposition of Dr. C. R. Swackhamer)

CROSS EXAMINATION

Plaintiff worked for me from the first of September 1930, for a period of sixteen or seventeen days, and then left on account of the death of her brother. Plaintiff returned to work the first of October 1930, and continued to work steadily until February 1, 1931. Plaintiff left on February 3, 1931, and returned to work on March 1, 1931 for two days. Plaintiff received \$100.00 per month with board and room, while employed by me; that her work was satisfactory and that she was receiving pay for the work she performed and for no other reason.

At this stage of the trial the following proceedings took place:

MR. FOOKS: I don't believe this was offered in evidence. It was offered in the deposition of Mr. Sexson which we did not read, and that is, the hospital record at the Good Samaritan Hospital.

MR. GERLACK: We will waive objection and stipulate that they go in evidence.

THE COURT: It is now admitted in evidence as Government's Exhibit I.

This report of the physical examination and the operation record of Dr. E. Payne Palmer is as follows:

ARIZONA DEACONESS HOSPITAL

Phoenix, Arizona.

Physical Examination.

Case No. 761

Name: Miss Frances Hill Dr. E. P. Palmer Date
4-25-27

Working diagnosis: After physical examination—
Chronic cholecystitis and chronic appendicitis.

Physical findings: Head, Neck, Chest, Cardio-Vascular,
Abdomen, Genito-Urinary, Skin, Bones and Joints,
Glandular, Neuro-muscular.

General: Expression one of discontent. Skin sallow.

Head & Neck: Eyes react normally to light and accommodation. Tongue slightly furred. Nose, throat, tonsils and teeth normal condition. No glandular adenopathy. No thyroid enlargement

Chest: Normal. Heart normal position. Apex beat in the fifth interspace, heart sounds are normal. Lungs show moderate amount of fibrosis on X-ray. No abnormal sounds in lungs. No rales.

Abdomen: Tenderness under right costal margin with some muscle rigidity, of right rectus. Tenderness over lower portion of right rectus, especially marked on deep pressure.

Neuro-muscular: Normal Cholecystogram shows retention of dye in Gall Bladder after thirty-six hours. Appendix not visualized. Tenderness in right iliac region on fluoroscopic examination. X-ray diagnosis was chronic cholecystitis and chronic appendix.

Examined by E. Payne Palmer.

OPERATION RECORD

Surgeon is Responsible for all Data on this page.

Name Miss Frances Hill Location 203 Admission
No. 761

Pre-operative Diagnosis (reasons for operating)
Chronic appendicitis and cholecystitis

E. Payne Palmer
Surgeon

Operation Appendectomy & cholecystectomy Date
4-25-27

Finding, Normal and Abnormal Four inch incision into upper portion of right rectus, under local and gas anesthesia. It was necessary to use almost every type of anesthetic to anesthetize this patient. Appendix, adherent, post cecal, sclerotic at distal three-fourths. Gall bladder thickened. Large amount of fat subperitoneal. Liver showed moderate amount of sclerosis radiating from Gall Bladder. Other abdominal organs are negative. Appendectomy and cholecystectomy with drainage.

Immediate Post-operative Condition (Hemorrhage, Shock, etc.) Good.

Post-operative Diagnosis Same

Correct E. Eddington Miss Sanders

Sponge Count Instrument Nurse Run Nurse

Dr. E. P. Palmer Dr. Brockway
Surgeon First Assistant

At this stage of the trial the following proceedings took place:

MR. FOOKS: I would like at this time, your Honor, to read one medical report in evidence which I don't believe has been covered as yet. You will recall I went up to 1926; then I didn't cover 1931 altogether, that is, just partially. I presume counsel will permit me to read from this transcript to save time.

MR. GERLACK: I have no objection. I will stipulate, if you want, that that go in evidence.

MR. FOOKS: I think that might be a good idea. There are no objectionable matters in it. In other words, the things that are in it are proper.

THE COURT: Then we will mark it as a Government's exhibit.

MR. GERLACK: I think it would be of material assistance to the jury instead of having to go through these numerous medical reports. I think counsel has been very fair in getting what belongs in there and leaving out what doesn't.

MR. FOOKS: As the jury will review this in the jury room, I see no reason for reading from the examination of '31.

THE COURT: It may be marked as Government's Exhibit P.

Government's Exhibit P, which is a summary of medical reports made by Government physicians, is as follows:

SUMMARY OF GOVERNMENT MEDICAL
EVIDENCE

12-19-19 Dr. J. E. Huffman, Surgeon, U. S. P. H. S.
Service, Tucson, Ariz.

Physical Examination: Dullness, decreased
breath sounds left lower lobe, friction rub
same area.

Diagnosis:

Pleurisy with adhesions.

Doctor's Conclusions:

Does not advise resuming occupation of
nurse. Not bedridden—able to travel.
Will accept hospital care, if necessary—
hospital care not advised.

4-7-20 Dr. J. W. Tappan, Surgeon USPH Service,
El Paso, Texas.

Physical Examination:

Reveals roughening over larger bronchi

Diagnosis:

Bronchitis, chronic

Doctor's Conclusions:

Does not advise resuming occupation of
nurse. Not necessary to remain in bed
—able to travel.

Claimant does not desire hospital care—
not advised.

Claimant has a major vocational handicap.
Vocational training not feasible.

5-13-20 Dr. W. E. Vandevere, Surgeon USPH Service, El Paso, Texas.

Physical examination:

Roughening over larger bronchi

Diagnosis:

Bronchitis, chronic

Doctor's Conclusions:

Does not advise resuming occupation of nurse.

Not bedridden—able to travel.

Does not advise hospital care—claimant will not accept.

Claimant has a major vocational handicap.

Vocational training is feasible and recommends that claimant be allowed to take vocational training.

6-7-20 Dr. W. E. Vandevere, Surgeon, USPH Service, El Paso, Texas.

Chest examination:

Lungs: Shape of chest—full

Has not lost weight.

Chest measurements: Inspiration 38 inches, expiration 35 inches.

Did not detect any pathological condition in chest except roughening over larger bronchi.

Rate of respiration: 26

No haemoptysis.

Heart: No valvular lesion detected.

8-4-20 Dr. Ernest B. Thompson, Surgeon, USPH Service, El Paso, Tex.

Physical examination:

Claimant extremely well developed and nourished. Chest full and expansion good. Some slight roughening over the larger bronchi, otherwise chest negative.

Diagnosis:

Bronchitis, chronic.

Doctor's Conclusions:

Claimant able to resume former occupation as nurse and advises that she do so.

Not bedridden—able to travel.

Hospital care not advised though claimant will accept, if necessary.

Vocational handicap minor at present—training is feasible.

8-16-20 Dr. J. W. Tappan, Surgeon, USPH Service, El Paso, Texas.

Physical examination:

Claimant well developed and nourished; chest full and expansion good. Evidence of hyper-plastic pleuritis, left base, with some post-influenza rales, which may possibly be tuberculous. Fibrosis right lobe, upper, especially posteriorly. In view of report of X-ray findings we have hesitated to give this claimant a diagnosis of tuberculosis though the present examiner feels sure that this should have been done long ago. X-ray report made

by Dr. J. W. Cathcart under date of 6-29-20, is as follows:

Lungs: Hilus shadows rather heavy and contain large number calcified glands. Apparently some scar tissue scattered throughout right side.

Conclusions:

Markings not typically tuberculous.

Diagnosis: Bronchitis, chronic tuberculosis, chronic pulmonary.

Doctor's Conclusions:

Claimant not able to resume former occupation as nurse. Should be in bed part of time—able to travel.

Hospital care advised and was transferred to USPHS Hospital #55, Ft. Bayard, N. M.

Vocational handicap major — vocational training not feasible.

After careful consideration of all physical findings in this case writer felt that diagnosis of tuberculosis should have been given previously.

8-22-20 Dr. J. J. Beatty, USPHS Hospital #55, Ft. Bayard, N. M.

Physical examination:

Inspection: Looks well, well nourished and developed, no chest deformities, expansion appears good and equal on both sides.

Palpation: Slight decreased tactile fremitus both lowers.

Percussion: Decreased resonance above 2nd rib and 3rd ds. spine both sides, also both bases.

Auscultation: Increased vocal resonance above 3rd and 4th ds. spine right, and above 3rd rib and 3rd ds. spine left. Broncho vesicular breathing above 2nd rib and 3rd ds. spine both sides. Diminished breath sounds at both bases. No rales heard.

Diagnosis:

Pleurisy, chronic, fibrinous both bases.

Doctor's Conclusions:

Claimant not able to resume former occupation as a nurse at present.

Not bedridden—able to travel.

Hospitalization advised for observation—claimant will accept.

Vocational handicap major at present—vocational training not feasible at present.

10-21-20 Dr. C. W. Coutant, Surgeon USPHS Hospital #55, Fort Bayard, N. M.

Statement:

“This is to certify that Miss Frances Hill, now a patient in this Hospital is an arrested case of Pulmonary Tuberculosis, and physically able to accept vocational training.”

10-22-20 Dr. C. W. Coutant, USPHS Hospital #55,
Fort Bayard, N. M.

Physical examination:

Inspection: Chest broad and well nourished. No depressions. Palpation: Tactile fremitus increased on right, not more than normal. Percussion: Rt. impaired resonance below 5th ds. and below 3d rib in mid-axillary line. Lt. Impaired resonance above 2d rib and 3d ds. Auscultation: Rt. Diminished breath sounds base with slight friction rub, mid-axillary line. No rales. Lt. Diminished breath sounds at base. No rales.

Diagnosis:

Under observation for tuberculosis pulmonary, chronic. Pleurisy, chronic, fibrinous both bases.

Doctor's Conclusions:

Claimant not able to resume former occupation as nurse. Not bedridden—able to travel. Hospitalization advised—will accept. Claimant has a major vocational handicap—vocational training is feasible.

11-6-20 Dr. W. E. Vandevere, Surgeon, USPHS,
El Paso, Texas.

Physical examination:

Inspection reveals claimant robust, well developed and nourished. Palpation and percussion negative. Auscultation reveals broncho-vesicular breathing at right apex

and increased vocal resonance about fourth rib and fifth dorsal spine right lung. A few clicks upper lobes, each lung. No rales in either lung. X-ray report by Dr. Cathcart is as follows: Lungs: Hilus shadows rather heavy and contain large number calcified glands. Apparently some scar tissue scattered throughout right side. Conclusions: Markings not typically tuberculous." Roughened breathing over larger bronchi.

Diagnosis:

Tuberculosis, pulmonary, chronic (arrested)

Bronchitis, chronic.

Doctor's conclusions:

Claimant not able to resume former occupation

Not bedridden—able to travel

Does not advise hospital care, but will accept if necessary.

Has a major vocational handicap—recommends vocational training as being feasible.

11-25-20 Dr. W. E. Vandevere, USPH Service, El Paso, Texas.

Physical examination:

Inspection reveals claimant robust, well developed and nourished. Palpation and percussion negative. Auscultation reveals broncho-vesicular breathing at right apex

and increased vocal resonance about fourth rib and fifth dorsal spine right lung. A few clicks upper lobes, each lung. No rales in either lung. X-ray report by Dr. Cathcart is as follows: "Lungs:—Hilus shadows rather heavy and contain large number calcified glands. Apparently some scar tissue scattered throughout right side. Conclusions: Markings not typically tuberculous". Roughened breathing over larger bronchi.

Diagnosis:

Tuberculosis, chronic pulmonary (arrested)

Bronchitis, chronic.

Doctor's Conclusions:

Claimant not able to resume former occupation

Not bedridden—able to travel

Hospital care not advised—though claimant will accept.

Has a major vocational handicap, but vocational training is feasible.

8-23-21 Dr. Ernest B. Thompson, Surgeon, USPH Service, El Paso, Texas.

Physical Examination:

Chest: Shape: Full, deep and broad. Mobility Good. Palpation: Fremitus, Negative. Percussion: R. Lung negative; Left lung, negative; Auscultation R. Lung: Slight increase in voice and

breath sound at apex; broncho-vesicular breathing same place. No rales before or after cough. L. Lung: Posteriorly just above the scapula there is a small area of granular breathing.

Summary: Fibrosis upper right apex and upper left posteriorly.

Diagnosis:

Tuberculosis, chronic, pulmonary, moderately advanced, arrested.

Doctor's Conclusions:

Believes claimant can resume pre-war occupation. Not bedridden—able to travel. Hospital care not advised. Has vocational handicap but vocational training is feasible.

1-10-22 Drs. W. T. Doherty and P. E. McChesney,
Surgeons USPH Service, El Paso, Texas.

Physical examination:

Well nourished. Temperature 98.3 Pulse 80.

Eyes: Corrected by glasses.

Ears, Nose & Throat: Negative.

Heart & Abdomen: Negative.

Extremities: Negative.

Chest: Shape: Well formed. Mobility: Expansion about equal & symmetrical. Palpation: Fremitus negative. Percussion: R. Lung: Slightly impaired resonance apex to 2nd rib. L. Lung: Normal Auscultation: R. Lung: Marked

broncho-vesicular breathing and exaggerated voice at apex; no rales before or after cough. L. Lung: Normal.

Summary: Fibrosis right apex.

Diagnosis:

Tuberculosis, chronic, pulmonary (arrested)

Doctor's conclusions:

Claimant able to resume pre-war occupation as a nurse. Not bedridden and able to travel.

Hospital care not advised.

Has a vocational handicap but vocational training is feasible.

2-15-22 Dr. Fred G. Holmes, Att. Specialist T. B. Phoenix, Arizona.

Physical Examination:

Well developed and very well nourished young woman. Color good, eyes, ears, nose and throat negative. Heart—not enlarged, regular no murmur. Abdomen negative. Chest: Shape: Well shaped, mobility normal. Percussion: Right lung: Slight decrease 2nd and 3rd s. L. Lung: Slight decrease at apex Auscultation: R. Lung: Broncho-vesicular breathing and increased whisper 2d & 3d s. No rales before or after cough. L. Lung: Prolonged expiration over hilus near

sternum and at apex. No rales before or after cough. Summary: Slight old infiltration both apices most marked on the right without evidence of activity.

Diagnosis:

Tuberculosis, chronic, pulmonary, incipient, arrested.

Doctor's Conclusions:

Claimant able to resume her former occupation as nurse; Not bedridden—able to travel—no hospitalization recommended; has a slight vocational handicap; vocational training feasible.

7-5-22 Dr. W. W. Horst, Globe, Arizona.

Physical Examination:

Well nourished and developed, slightly roughened breath sounds in left thorax posteriorly. Chest: Shape symmetrical; mobility good; Palpation: Fremitus normal; Percussion, right and left lungs: Good resonance; auscultation negative right lung; left lung: Slight inspiratory roughening in left base posteriorly.

Diagnosis:

Chronic Pulmonary tuberculosis, incipient, quiescent.

Doctor's Conclusions:

Claimant able in part to resume occupation as nurse; Not bedridden; able to travel; has vocational handicap in part; but vocational training feasible.

7-26-23 Dr. Fred G. Holmes, Phoenix, Arizona.

Physical examination:

Well developed and very well nourished young woman. Is not apparently ill. Eyes, ears, nose and throat negative. Heart: Not enlarged, regular, no murmurs. Abdomen negative. This patient complained of a rise in temperature in the middle of the morning. As I always found her normal when I saw her in the afternoon I made an appointment with her for 9:30 A. M. several mornings but she never returned. Chest: Broad, well shaped; mobility normal. Palpation: Fremitus: Normal: Percussion: R. Lung: Decreased 2d rib and 3rd. s. L. Lung. Decreased 2d rib and 3rd s. Auscultation: R. Lung. Broncho-vesicular breathing and increased whisper 2d rib and 3rd r. s. No rales before or after cough. L. Lung: Increased whisper over hilum. No rales before or after cough.

Diagnosis:

Tuberculosis, chronic, pulmonary, incipient, arrested.

Doctor's conclusions:

Claimant able to resume her former occupation; not bedridden, able to travel; vocational training feasible.

8-27-23 Dr. R. D. Kennedy, Globe, Arizona.

Physical examination:

Temperature 10:00 A. M. 98.6—general examination negative; Chest: Shape, full; mobility normal; palpation, percussion and auscultation normal. Summary: Infiltration in hylus of both lungs as shown by X-ray. Left pleura slightly thickened

Diagnosis:

Pulmonary tuberculosis, incipient, arrested.

Doctor's conclusions:

Claimant able to resume former occupation; not bedridden; able to travel; hospital care not advised; Claimant has no vocational handicap; vocational training feasible.

10-31-23 Drs. Fred G. Holmes, A. M. Tuthill and A. R. Warner, Phoenix, Arizona.

Physical examination:

Very well developed and nourished. Scar of Thyroidectomy. No symptoms of hyperthyroidism. No pathology found. Chest exam: Apices slightly hazy—heart and diaphragm shadows normal. Hili shadows enlarged with moderate bilateral infiltration—both lower and left upper bronchial trees are thickened—small cavity described in previous report in upper left

lobe not visible in this examination. X-ray conclusion: Possible perihilar tuberculosis. If this patient ever had pulmonary tuberculosis it has left no positive signs.

Diagnosis: No pathology

Doctor's Conclusions:

Claimant able to resume her prewar occupation as nurse. Not bedridden—able to travel. Hospital care not advised. Vocational training is feasible.

2-27-24 Drs. L. H. Fales, L. A. Walker and J. T. Malone, U. S. Veterans Hospital, Phoenix, Arizona.

Physical examination:

OUT PATIENT. Looks well, well developed and well nourished. Color good. Weight 161 lbs. Temperature 37. Skin and mucous membrane negative. Vascular system negative. Blood pressure not taken. G. U. System negative. Osseous system negative. Pulse 92. Glandular system negative. Heart negative. Abdomen negative. Nervous system negative. Muscles and joints negative. Urine negative. Sputum: No specimen. Eye, ear, nose and throat report: Vision O. U. 20/30, corrected to 20/20 by glasses. Hearing A. U. 20/20. No pathology found in nose and throat. Chest: short, broad, thick. Palpation, percussion negative. Auscultation. R. Lung: Broncho-

vesicular breathing (slight) over apex posterior. Few atypical crepitations this area. L. Lung: Breath sounds apparently normal. No rales. Pleural crepitations at base. No parenchymal infiltration either lung. Surgical report: Thyroidectomy 1917, healed.

No surgical condition at present.

X-ray of chest 2-28-24 by hospital Roentgenologist: Films good. Stero well. Bones negative. Right diaphragm smooth; costo-phrenic angle clear. Left diaphragm hazy; costo-phrenic angle not shown on film. Trachea and heart negative. Hila increased in density with caseous and calcified nodules at each. The upper lobe bronchi both right and left are slightly heavier than normal; their borders are studded. Linear markings cannot be traced to the surface. The right main stem bronchus shows some connective tissue change.

Summary: Fibrosis both upper lobes.

Diagnosis:

Tuberculosis, pulmonary, chronic, arrested, incipient (A).

Doctor's Conclusions:

Claimant able to resume prewar occupation as nurse. Not bedridden—able to travel. Hospital care not advised. Vocational training is feasible.

8-17-26 Drs. Theodore E. Shwarz and Wm. C. Schroeder, Phoenix, Arizona.

Physical examination:

General appearance: Plump, looks well. States that she has acute coryza.

Head and neck: Eyes — fitted with glasses. Ears negative. Thyroidectomy 1917. Parts of gland still palpable. Teeth good. Tonsillectomy 1919.

Heart: Pulse sitting 78, standing 90. No adventitious sounds, no bruit, or thrills, rythm very susceptible to external irritation, pulse increases on slight exertion. Probably a "nervous heart" a sequella of hyperthyroidism. Abdomen: No scars, no masses, no tenderness. Extremities negative.

Chest: Broad, lung full, mobility restricted with lagging in lower left. Palpation: Frenitus negative. Percussion: R. Lung: Dullness above 4th rib and 5 s. L. Lung: Dullness over lower lobe and above 2 rib & S. S. Auscultation: R. Lung: B. S. B. V. above 2 rib & S. S. when W. V. S. are increased. No rales.

L. Lung: B. S. B. V. above 2 rib with S. S. WVS distant Friction rubs over lower lobe. No rales.

Summary: Fibrosis both uppers, thickened adhesions pleura lower left.

Diagnosis:

Chronic pulmonary tuberculosis, moderately advanced, non-active. Chronic fibrous pleurisy.

Doctors' Conclusions:

Claimant not bedridden—able to travel.
Hospitalization not advised.

2-6-31 Drs. J. T. McDonald and R. C. Foster,
Phoenix, Arizona.

Physical examination:

Normal weight. Skin negative. EENT negative.

Neck: Thyroid enlarged; once had vessel ligated.

Heart: 72 to 84 sitting; 96 standing. Has sharp decisive 2nd sound in aorta carried into the neck. No other abnormal tones noted. Area cardiac dullness (see x-ray). Mitral tones are normal.

G. I. Gall bladder and appendix removed.

Extremities: Negative.

X-ray of Heart: Greatest transverse diameter of chest—31 cm. Greatest transverse diameter of heart 14 cm. Transverse diameter of aortic arch—6 cm. The heart outline suggests possibly a slight left ventricular enlargement but the heart measurements are well within the normal limits. This reading is from a chest film.

X-ray of chest; Conclusions: Minimal fibrosis uppers, slight; peribronchial thickening base.

Diagnosis:

Tuberculosis, pulmonary, minimal inactive. Bronchitis, chronic, mild.

Doctor's Conclusions:

Claimant not bedridden, able to travel. Observation to determine diagnosis not necessary.

2-17-31 Opinion of special Tuberculosis Board consisting of Drs. R. C. Foster, J. T. McDonald, and A. J. Hoskins, Phoenix, Arizona.

"The undersigned Board of Three Medical Officers have carefully reviewed the file of the above captioned. In accordance with the Provisions of Reg. 215, it is our opinion that:

1. The claimant has suffered active tuberculosis of a compensable degree.
2. Tuberculosis has reached complete arrest.
3. Tuberculosis was completely arrested 10-31-23".

3-26-31 Drs. J. T. McDonald and R. C. Foster, Phoenix, Arizona.

Physical examination:

Blood pressure 145/80. Pulse 84/96/120 —after exertion remains at 96 reclining 5 minutes. Left ventricle shows a pro-

longed soft mitral tone, not transmitted, not carried into the aorta. Has marked dyspnea. Rate and dyspnea believed influenced by both overweight and thyroid with moderate hyper-tension. (referred to x-ray: Negative)

No diagnosis.

Doctor's Conclusions:

Claimant not bedridden able to travel. Observation to determine diagnosis not recommended.

4-3-31 Drs. C. P. Harrod, J. H. Mallery, and J. J.
to Klein, Veterans Administration Hospital,
4-17-31 San Fernando, Calif.

Physical examination:

White female, well developed and well nourished. Chest is medium length, broad and thick. Mobility good and equal. Head and neck: See EENT and Dental reports. Thyroid palpable. Had operation for ligation of both thyroid arteries in 1916. Skin is clear.

Scars: Healed P. O. scar anterior across neck, result of operation for legating both thyroid arteries in 1916. Healed P. O. scars on abdomen. G. U. system negative. Menstruation regular and normal. Rectum, slight hemorrhoids, ext.

non symptomatic (patient's statement).
Abdomen: Liver and spleen not palpable.

Physical examination continued:

No masses or tenderness elicited on palpation. There is a healed P. O. scar about 6 inches long extending along right rectus muscle for removal of gall bladder and appendectomy in 1927. Patellar reflexes present. Heart: PMI in 5th interspace in left mid clavicular line. Heart action rhythmical. No murmurs heard. Rate slightly accelerated. Blood Pressure 140/90. Basal metabolism recommended.

X-ray of chest: Negative for active tuberculosis the right base suggests possible old basal infection. The transverse diameter of the heart is shown to be 14cm. M. M. 9.5 Cm. M. R. 4.4 C. M. The aortic area is 6.2 Cm. These markings would be considered within normal limits for patient of this size and weight from possibly the aortic area which is moderately increased.

Diagnoses:

Tuberculosis, chronic, pulmonary, minimal inactive. Pleurisy, chronic, fib. not found. Hemorrhoids, external, mild, non symptomatic Under observation for Heart dis-

ease changed to Tachycardia, simple (per electrocardiograph).

Doctors' Conclusions:

Basal metabolism recommended. Claimant not bedridden—able to travel.

5-19-31 Dr. Frank L. Long, N. P. Specialist, Los Angeles, Calif.

Mental examination:

* * There is an old, fine thyroidectomy scar that is not adherent or tender and there is a noticeable enlargement of the thyroid gland at this time. The gland is not tender or nodular. There is no exophthalmos, Dalrymple, Moebius or Von Graefe sign. The pulse rate today is 78. Blood Pressure is 154/90.

Doctor's Conclusions:

My impression is that her complaint of fatigability is not due to a psychoneurosis and not due to a thyrotoxicosis. As none *if* found at this time, I do not believe that hospitalization is necessary for a neuro-psychiatric condition.

Normal pulse rate with normal Basal Metabolism test would indicate that there is no thyrotoxicosis present at this time.

5-29-31 Drs. C. P. Harrod, A. G. Walker and J. J. Klein, Veterans Administration Hospital, San Fernando, California.

Physical examination:

White female, well developed and well nourished. Chest is medium long, broad and thick. Mobility good apparently equal. Head and neck: Thyroid palpable. Had operation for ligation of both thyroid arteries in 1916. Skin is clear. Scars: Healed post operative scar anterior across neck result of operation for ligating both thyroid arteries in 1916. Healed post operative scars on abdomen.

Physical examination continued:

Abdomen: Liver and spleen not palpable. No masses or tenderness elicited on palpation. There is a healed post operative scar about 6 inches long extending along right rectus muscle for removal of gall bladder and appendectomy in 1927. Patellar reflexes present.

Heart: PMI in 6th I. S. in the mid clavicular, no murmurs heard over mitral area. Aortic 2nd sound rather markedly accentuated and a systolic murmur of aortic valve increased upon exercise.

Blood pressure: Recumbent 150/98; after exercise 150/88; three minutes after exercise 142/84. Pulse recumbent 96. After exercise 120; three minutes after exercise 96.

Diagnosis:

Aortitis, chr. well compensated, not syphilitic, probably rheumatic.

Tuberculosis, pulmonary, chronic, minimal, inactive;

Tachycardia, simple.

Hemorrhoids, external, mild, non-symptomatic.

Doctors' Conclusions:

Claimant bedridden: No. Able to travel.

Recommendation: Thirty days further hospitalization with resistive exercise according to McDills method.

11-17-31 Drs. C. P. Harrod, A. G. Walker, J. J. Klein and H. M. Fine, Veterans Administration Hospital, San Fernando, California.

Physical examination:

Essentially the same as examination of May 29, 1931 except as follows:

Heart: Palpation negative. PMI 5th interspace internal to nipple line. No

murmurs at this point. There is a short systolic murmur heard best on this examination just to the left of the sternum in 3rd interspace. Aortic 2nd accentuated and heard better after exercise. Pulse reclining 68; sitting 80; 3 minutes after exercise 72. Blood pressure: Reclining 138/90; sitting 130/80; 4 minutes after exercise 136/ not obtained.

Basal Metabolism minus 2.

Diagnosis:

Tuberculosis, pulmonary, chronic, minimal, arrested;

Aortitis, chronic, well compensated;

Tachycardia, simple

Arterial hypertension, not found.

Pleurisy, not found

Hemorrhoids, ext. mild, non-symptomatic

Presbyopia, uncorrected.

Doctor's Conclusions:

Patient examined 11-17-31 by a Board of three medical officers as having reached maximum benefit and further hospitalization not needed.

At this point defendant rested, and plaintiff proceeded to put on her evidence in rebuttal.

PLAINTIFF'S CASE IN REBUTTAL

FRANCES HILL

recalled to the stand as a witness on her own behalf testified in rebuttal as follows:

I heard Dr. Mason in his deposition state that I broke an X-ray tube. I didn't break the X-ray tube. I hadn't used it that day—he was the only one that had used it. There was a controversy or unpleasantness on account of breaking that tube. There was no unpleasantness on Dr. Cathcart's part because Dr. Cathcart knew I didn't break it. But Dr. Mason was only in training, the same as myself.

Concerning the records, Mr. Crosher, the man from the Pacific Mutual Life Insurance Company, who brought the records up here showing that I purchased two so-called annuity bonds—explaining the circumstances under which I took out these bonds and whether I was given a physical examination in connection with them. I took them out on my brother's advice. I knew the agent that sold these bonds. She was a personal friend of mine, a lady, Miss Larson, and my brother knew something of those bonds and he made the payment himself. Had they produced all the records they would have produced that my brother, James H. Hill, a real estate broker of Newport, Arkansas, paid \$150 as the first payment through a check that was made to me and endorsed by me and turned over to Miss Larson, and that was the first payment. My brother made the subsequent payments himself. He sent two different checks for \$100 each. Different people cashed those checks for me, but this one, it seems to me, the Pacific Mutual should have a record of it. That was not the only time

(Testimony of Frances Hill)

my brother sent me money. My brother sent me money every month, no certain amount due to the fact that one month I might need more than I did other months.

At various times I went back to Arkansas to visit my mother. My brother wired me the money. He sent it or wired it always for me to go back and visit my mother. My brother is not living now. He was killed September, 1930. I had been back there six months before he was killed and he wired the money to me in March. I had been back there and he wired \$200 for me to make the trip. None of the money that went for the purchase of that annuity bond came from any money I earned.

I heard Mrs. Schmidle, in her deposition, say that she thought I left the Miami Copper Hospital of my own free will. That is not correct. I left because I was not able to do the work. I resigned by request.

Concerning Dr. Holmes' statement in his deposition that I was supposed to go back the next morning for an examination and that I didn't show up—he said three mornings. I don't know anything about that. I was sick in bed. I was not able to go back. I did my best to send him word. I had the matron to call him. Neither Dr. Holmes nor Dr. Thompson nor any other Government doctor ever observed me for six months and give me two months' walking exercise, one hour, twice daily, in connection with any examination they ever made of me; I never had that test in my life. Outside of the time I was in the Fort Bayard Government Hospital and the San Fenando Government Hospital the longest time that any of these doctors who made reports here ever took to examine me, I would say, was 15 minutes. They never had me undress. They always unfastened the neck

(Testimony of Frances Hill)

of my dress. They listened to my chest with me sitting down.

The hardest job I have ever had since discharge I believe was the Indian School. The reason why that was the hardest—you see, I was supposed to teach the Indian School, the eighth grade children, home nursing, and this husky voice, of course, would become weaker from me trying to teach them. I couldn't do that. It was very hard on me. I would have to go to bed every time I had a class.

CROSS-EXAMINATION

When I answered the question of Mr. Gerlack that each time the Government doctor examined me, except during those two periods of hospitalization, they only examined me for 15 minutes, I didn't take into consideration the different times they made X-rays—because the doctor's didn't make the X-rays. An X-ray only takes about less than a minute and a half. They made X-rays of me at different times. I am speaking now that the doctor himself who examined me only took 15 minutes but the X-ray was apart from that. It was not even in the doctor's office.

I don't recall who I made beneficiary of those bonds in case that I should have died while they were effective. It might have been my mother, I really couldn't say. If the record showed it was my estate that would probably be correct. The friend of mine who negotiated that bond transaction was Miss Larson. When I first took out these bonds there was a note made for some time, but the first payment, I recall, a check for \$150 written on the First

(Testimony of Frances Hill)

National Bank of Newport, Arkansas, by my brother. I recall the time when I endorsed that check and turned it over to her. Now the different little details of those bonds I couldn't say, but I do recall the check. Recalling the bond that I first took out, the one in 1924 that I gave a note due in April, 1925, for \$171.13, the bond was taken out while I was at the Indian School. That was the latter part. I took it out and made a note and paid that note before Christmas. I recall Miss Larson coming there to see me and it was before Christmas time. That was the first payment—that must have been—yes, that must have been. I couldn't recall the details. I recall the check that made the payment. I don't recall giving her a note which I paid at some later date, but if the records show that I did, I did.

REDIRECT EXAMINATION

I got the money to pay for the gall bladder operation from my brother. I had no other place to get it. My brother gave me \$200 for that. During the time, you see, I was sick in bed. I had a woman taking care of me for six weeks before this gall bladder operation. Dr. Brockway was treating me at that time. I only went to Dr. Palmer to consult him as a surgeon. I got the money for it—I borrowed on these annuity bonds. The X-ray that I had to have because the X-rays are around \$100 and I borrowed this money on the bonds, which was never paid back.

The examinations that were given to me by the physicians in the employ of the Government were very brief. I remember that detail due to the fact that they were very brief. In 1923 I wrote to the Government Bureau

(Testimony of Frances Hill)

complaining that these examinations were brief. I recall writing a letter to the Veterans Administration Headquarters, General Hines, at that time in San Francisco. I believe it was General Hines. I recall writing a letter to the Veterans Administration in Washington. Before that time I had written the Phoenix Veterans Bureau. I believe it was in 1923 that I wrote a letter to the Government complaining about the shortness of time of the medical examinations given me. I recall writing three different letters complaining; they were written in 1923; one might have been written the winter of 1924. I wrote the first letter probably in August, 1923—the latter part of the summer. I would not say for sure, but I believe that was the time. It was in July, 1923, that I quit this position at the Indian Sanitarium. The name of the doctor whose examination I made complaint about was Dr. Holmes. I wrote one letter to General Hines in San Francisco. I wrote one to the Veterans Bureau in Phoenix. I believe that was the first one I wrote. It might have been in August. I wrote to General Hines during the fall some time. I know I wrote a third letter about the latter part of 1923. I also wrote a letter to Senator Carl Hayden from Arizona during the winter of 1923 and the early part of 1924. I remember writing one letter to the Women's Overseas League in San Francisco some time during that winter—1923-24. I can't give you the date. I wrote letters—to the Veterans Bureau in Phoenix; General Hines, in Washington; Senator Carl Hayden;

(Testimony of Frances Hill)

Women's Overseas League; I don't recall any more. I am relying solely upon my recollection. I have some letters at home from Senator Carl Hayden that would refresh my memory, but I have nothing here with me.

After all this correspondence I took a job at the Indian School beginning in the fall of 1924. Dr. Duncan gave me the regular routine examination when I went to the Indian School. The age of the youngest children at that school was six years, I believe. I believe that is the rule; and their ages range from six to about twenty. At that time that I was residing in Arizona, beginning with January, 1923, from that time on, I had a bank account in the First National Bank of Phoenix. When I was in Globe I had a little bank account while I was there in 1923. When I left Dr. Wheeler's place I went to Globe to rest because it is cooler up there, and I had a bank account. I don't recall the name of the bank in Globe. Anyway, it wasn't the Valley Bank. The Valley Bank is the most popular bank. Throughout the period I was residing in Arizona my brother remitted money to me in varying sums, at least once a month. I don't recall that he ever missed a month sending me money of some amount. Sometimes it was more than others, according to my needs. I don't recall him ever sending me less than \$50 a month. Some months he sent me more than \$50, but there wasn't a month, so far as I can remember, while I was living in Arizona that he failed to send me at least \$50.

(Testimony of Frances Hill)

In 1923, during this period that I had this job at the Indian Sanitarium from January 1, 1923, to July 31, I was receiving \$80 a month besides my room and board. Concerning the \$50 a month, at least, that my brother sent me during this period, I did different things with it. I had a bank account during that time, and at different times when I wasn't working I had to pay somebody to take care of me, which was quite expensive at times. During that period I was living at the Indian Sanitarium. I wasn't paying anybody to take care of me during that time. I had two weeks sick leave, or vacation, I don't know which they called it, and during that time I did spend it in bed and had my meals served to me. That was the latter part of my stay there. In other words, some time in July, 1923, I was absent about two weeks in private care.

On the basis of a minimum of \$50 a month, that would mean that from January 1 to July 31 my brother had sent me at least \$350. I didn't keep a record or recall for what purposes I used that amount of money—what I did with it. I do know when I gave up my work I paid a woman's expenses to drive me to Globe, where it was cooler, and there I remained in the hotel until she found an apartment, and part of that money was spent for that. My brother was my only source of income at that time, and she found an apartment for me, she got me placed in the apartment and a woman to take care of me.

(Testimony of Frances Hill)

In the fall of 1924 I took this position at the Indian School at a salary of \$125 a month less \$10 a month for my keep. I was furnished a room plus \$115 a month net. I testified it was my recollection that I kept that job, at least I was on the payroll of that job until the February following—it was between four and five months I was there. The money that I got from my brother and from the Indian School I paid on these bonds, these income bonds, on his advice. The first remittance on account of these bonds was a check from my brother in the amount of \$150; the first payment on the bonds was a check from my brother for \$150. All the little details about it I don't recall. About the other \$50 a month—well, sometimes I had little debts to pay when I wasn't working. I would owe people different little debts. I don't recall just what I did with every dime of it, but I do recall that it was his seemingly intention to pay for these income bonds for me in case he was not so progressive later. I continued to receive at least \$50 a month from my brother until he passed away in September, 1930. As to whether in addition to that I was working, say at least 13 cases from October, 1929, until August, 1930—it could have been 13 days. I am not saying it was. Some were longer, but I never worked a long time during that time, and at different times when I wasn't working I had a woman to take care of me, and the expenses sometimes were more than others. During this period while I was doing private nursing between 1923 and 1930, some of the jobs were what they call twelve-hour shifts.

At this stage of the trial the following proceedings took place:

THE COURT: Now, then, gentlemen, we are about to complete the evidence in the case, and as part of that evidence, it has been stipulated that between February 14, 1919 and June 30, 1923, the plaintiff received a total of \$1371.46 from sources other than—or, in other words, in addition to any money derived from her earnings, and any moneys derived from relatives and friends; that in addition, she received \$148.39 on October 22nd, 1926, from such outside sources having nothing to do with her earnings or her relatives or friends; and that from and after October 1926, until after the commencement of this lawsuit she also received \$50 per month from sources other than her earnings and other than from relatives and friends.

Now, this evidence is admitted solely with reference to the question as to whether the plaintiff was obliged to work by reason of any financial necessity or whether in whatever work she did do the same was performed for reasons other than financial necessity. At this time the evidence is closed, and—

* * *

THE COURT: I want to make one additional statement which is part of this stipulation:

That in addition to these sums that I have mentioned, the plaintiff also received a subsistence allowance in the sum of \$100 per month during the period that she was engaged in vocational training; that was approximately seven months during the year 1921.

At this point plaintiff rested.

At this stage of the trial the following proceedings took place:

MR. FOOKS: If the Court please, at this time I would like to move for a directed verdict on the ground that the plaintiff has failed to sustain the burden of proof by substantial evidence, and I submit that as a matter of law she has failed by a fair preponderance of the evidence to establish permanent and total disability on or prior to midnight of August 31, 1919, as required before she is entitled to judgment. Defendant bases its motion and submits that if a verdict should be rendered in favor of the plaintiff, that upon proper motion made it would be the duty of the Court as a matter of law to set aside the verdict and declare a mistrial.

The Court denied defendant's motion and the defendant noted an exception to the ruling of the Court.

Whereupon the cause was argued by respective counsel, and the cause was submitted to the jury.

After due deliberation the jury returned into the Court and rendered the following verdict:

"Judgment: We, the jury in the above entitled cause, find for the plaintiff, Frances Hill, and fix the date of her permanent and total disability from following continuously any substantially gainful occupation, on January 1, 1919.

"Dated: Los Angeles, California, December 11, 1936.

(Signed) Mark H. Barrington,
Foreman of the Jury."

Whereupon on the 18th day of December, 1936, the Court entered judgment in favor of the plaintiff, based upon the jury verdict, finding plaintiff entitled to the recovery of insurance benefits from and after January 1, 1919.

And thereafter on the 19th day of December, 1936, upon the application of the defendant and for good cause shown, the following order was signed by the Court and filed.

(Title of Court and Cause)

“ORDER EXTENDING TIME WITHIN WHICH TO
SERVE AND FILE BILL OF EXCEPTIONS
AND EXTENDING TERM”

On motion of Peirson M. Hall, United States Attorney for the Southern District of California, and Ernest D. Fooks, Attorney, Department of Justice, and good cause appearing therefor,

IT IS ORDERED that the time within which the defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including March 17, 1937.

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including March 17, 1937.

DATED this 19th day of December 1936.

H. A. Hollzer
United States District Judge.

And thereafter on the 16th day of March 1937, upon the application of the defendant and for good cause shown, the following order was signed by the Court and filed.

(Title of Court and Cause)

“ORDER EXTENDING TIME WITHIN WHICH TO
SERVE AND FILE BILL OF EXCEPTIONS
AND EXTENDING TERM”

On motion of Peirson M. Hall, United States Attorney for the Southern District of California, and Ernest D. Fooks, Attorney, Department of Justice, and good cause appearing therefor,

IT IS ORDERED that the time within which the defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including June 16, 1937.

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including June 16, 1937.

DATED this 16th day of March, 1937.

H. A. Hollzer

United States District Judge.

And thereafter on the 11th day of June, 1937, upon the application of the defendant and for good cause shown, the following order was signed by the Court and filed.

(Title of Court and Cause)

“ORDER EXTENDING TIME WITHIN WHICH TO
SERVE AND FILE BILL OF EXCEPTIONS
AND EXTENDING TERM”

On motion of Peirson M. Hall, United States Attorney for the Southern District of California, and Ernest D. Fooks, Attorney, Department of Justice, and good cause appearing therefor.

IT IS ORDERED that the time within which the defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including July 16, 1937.

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including July 16, 1937.

DATED this 11th day of June, 1937.

H. A. Hollzer
United States District Judge.

And thereafter on the 13th day of July, 1937, upon application of the defendant and for good cause shown, the following order was signed by the Court and filed.

(Title of Court and Cause)

“ORDER EXTENDING TIME WITHIN WHICH TO
SERVE AND FILE BILL OF EXCEPTIONS
AND EXTENDING TERM”

On motion of Peirson M. Hall, United States Attorney, for the Southern District of California, and Ernest D. Fooks, Attorney, Department of Justice, and good cause appearing therefor,

IT IS ORDERED that the time within which the defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including August 16, 1937.

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including August 16, 1937.

DATED this 13th day of July, 1937.

Wm. P. James
United States District Judge.

And thereafter on the 5th day of August 1937, it was stipulated by Counsel for the respective parties, with the approval of the Court, that the time in which the defendant might serve and file its proposed Bill of Exceptions be extended to and including September 16, 1937.

And thereafter on the 5th day of August 1937, upon the application of the defendant and for good cause shown, the following order was signed by the Court and filed.

(Title of Court and Cause)

“ORDER EXTENDING TIME WITHIN WHICH TO
SERVE AND FILE BILL OF EXCEPTIONS
AND EXTENDING TERM”

On motion of Peirson M. Hall, United States Attorney for the Southern District of California, and Ernest D. Fooks, Attorney, Department of Justice, and good cause appearing therefor,

IT IS ORDERED that the time within which the defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including September 16, 1937.

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including September 16, 1937.

DATED this 5th day of August, 1937.

H. A. HOLLZER
United States District Judge.

And thereafter on the 7th day of September, 1937, upon the application of the defendant and for good cause shown, the following order was signed by the Court and filed.

(Title of Court and Cause)

“ORDER EXTENDING TIME WITHIN WHICH TO
SERVE AND FILE BILL OF EXCEPTIONS
AND EXTENDING TERM”

On motion of Ben Harrison, United States Attorney for the Southern District of California, and Ernest D. Fooks, Attorney, Department of Justice, and good cause appearing therefor,

IT IS ORDERED that the time within which the defendant herein may serve, file, and settle its Bill of Exceptions herein is hereby extended to and including November 16, 1937.

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including November 16, 1937.

DATED this 7th day of September, 1937.

H. A. HOLLZER
United States District Judge.

And thereafter on the 12th day of November, 1937, upon the application of the defendant and for good cause shown, the following order was signed by the Court and filed:

(Title of Court and Cause)

“ORDER EXTENDING TIME WITHIN WHICH TO
SERVE AND FILE BILL OF EXCEPTIONS
AND EXTENDING TERM”

On motion of Ben Harrison, United States Attorney for the Southern District of California, and Ernest D. Fooks, Attorney, Department of Justice, and good cause appearing therefor,

IT IS ORDERED that the time within which the defendant herein may serve, file and settle its Bill of Exceptions herein is hereby extended to and including January 15, 1938.

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including January 15, 1938.

DATED this 12th day of November, 1937.

H. A. HOLLZER
United States District Judge.

And thereafter on the 10 day of January, 1938, upon the application of the defendant and good cause shown, the following order was signed by the Court and filed: .

(Title of Court and Cause)

“ORDER EXTENDING TIME WITHIN WHICH TO
SERVE AND FILE BILL OF EXCEPTIONS
AND EXTENDING TERM”

On motion of Ben Harrison, United States Attorney for the Southern District of California, and Ernest D. Fooks, Attorney, Department of Justice, and good cause appearing therefor,

IT IS ORDERED that the time within which the defendant herein may serve, file, and settle its Bill of Exceptions herein is hereby extended to and including March 16, 1938.

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including March 16, 1938.

DATED this 10 day of January, 1938.

H. A. HOLLZER
United States District Judge.

And thereafter on the 26 day of February, 1938, upon the application of the defendant and for good cause shown, the following order was signed by the Court and filed:

(Title of Court and Cause)

“ORDER EXTENDING TIME WITHIN WHICH TO
SERVE AND FILL BILL OF EXCEPTIONS
and EXTENDING TERM.”

On motion of Ben Harrison, United States Attorney for the Southern District of California, and Ernest D. Fooks, Attorney, Department of Justice, and good cause appearing therefor,

IT IS ORDERED that the time within which the defendant herein may serve, file and settle its Bill of Exceptions herein is hereby extended to and including April 16, 1938.

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including April 16, 1938.

DATED this 26 day of February, 1938.

H. A. HOLLZER
United States District Judge.

And now in furtherance of justice and that right may be done, the defendant, the United States of America, presents the foregoing as and for its Bill of Exceptions in the above-entitled cause and prays that the same may be settled, allowed, signed and filed as such.

Ben Harrison
 Ben Harrison
 United States Attorney

Ernest D. Fooks
 Ernest D. Fooks, Attorney,
 Department of Justice

Attorneys for Defendant.

The foregoing Bill of Exceptions contains all of the evidence, both oral and documentary, and of the proceedings relating to the trial and judgment in this action.

DATED at Los Angeles, California, this 19th day of Feby, 1938.

Ben Harrison
 Ben Harrison
 United States Attorney

Ernest D. Fooks
 Ernest D. Fooks, Attorney,
 Department of Justice

Attorneys for Defendant.

Service of the above and foregoing draft of the Bill of Exceptions in this action is herewith acknowledged this 19th day of February, 1938.

Alvin Gerlack

Alvin Gerlack

Attorney for Plaintiff.

(Title of Court and Cause)

“STIPULATION”

It is hereby stipulated by and between the attorneys for the respective parties hereto, that the foregoing draft of the Bill of Exceptions contains all the evidence given and proceedings had on the trial of this action, and that it is correct in all respects and may be approved, allowed, settled and ordered filed as the Bill of Exceptions in this action and made a part of the record herein upon the filing of this stipulation, without further or other notice to plaintiff or her counsel.

DATED Febr. 19th, 1938.

Ben Harrison

Ben Harrison

United States Attorney

Ernest D. Fooks

Ernest D. Fooks, Attorney,

Department of Justice

Attorneys for Defendant.

Alvin Gerlack

Alvin Gerlack

Attorney for Plaintiff.

The foregoing Bill of Exceptions, having been presented within the time allowed by law and this Court, and having been seen and examined by the Honorable Harry A. Hollzer, United States District Judge, who presided at the trial, contains all the evidence offered and introduced on the trial of this cause of Frances Hill, plaintiff, vs. United States of America, Defendant, and correctly shows the proceedings had on said trial; and the said Bill of Exceptions is correct in all respects and is hereby approved, allowed and settled and made a part of the record herein, this 26 day of February, 1938.

H. A. Hollzer

HARRY A. HOLLZER

United States District Judge Southern District of California Central Division.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

FRANCIS HILL,

Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant

No. 6155-H
AFFIDAVIT
OF SERVICE
BY MAIL.

UNITED STATES OF AMERICA)

) ss.

Southern District of California)

Bertha W. Ink, being first duly sworn, deposes and says:

That she is a citizen of the United States and a resident of Los Angeles County, California; that her business ad-

dress is 360 Pacific Electric Building, Los Angeles, California; that she is over the age of eighteen years, and not a party to the above-entitled action;

That on November 24, 1937, she deposited in the United States Mails in the Post Office Los Angeles, California in the above-entitled action, in an envelope bearing the requisite postage, a copy of Defendants Proposed Bill of Exceptions in the above-entitled cause, the original of which has this date been lodged with the Clerk of the United States District Court, Southern District of California, addressed to

Alvin Gerlack, Esq.,
Attorney at Law,
845 Mills Building,
San Francisco, California.

at which place there is a delivery service by United States Mail from said post office.

Bertha W. Ink
BERTHA W. INK

SUBSCRIBED and SWORN to before me, this 24 day of November, 1937.

R. S. ZIMMERMAN, Clerk, U. S. District Court,
Southern District of California

[Seal]

By L. B. Figg Deputy.

[Endorsed]: Lodged Nov 24, 1937 R. S. Zimmerman Clerk By Edmund L. Smith, Deputy Clerk. Filed Feb 26, 1938 R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA CENTRAL
DIVISION

FRANCES HILL,)	
)	:
	)	Plaintiff,
)	:
	)	No. 6155-H
vs.	)	PETITION
	)	: FOR APPEAL
UNITED STATES OF AMERICA,)	
)	:
	)	Defendant.

TO: THE HONORABLE HARRY A. HOLLZER,
JUDGE OF THE ABOVE-ENTITLED COURT:

NOW COMES the defendant, United States of America, by Peirson M. Hall, United States Attorney for the Southern District of California, and Ernest D. Fooks, Attorney, Department of Justice, and feeling itself aggrieved by the judgment entered in this cause, hereby prays that an appeal may be allowed, to-wit: from the United States District Court for the Southern District of Cali-

fornia to the United States Circuit Court of Appeals for the Ninth Circuit, and in this connection this Petitioner, with this Petition, hereby presents its Assignments of Error.

DATED this 16th day of March, 1937.

Peirson M. Hall
PEIRSON M. HALL
United States Attorney.

Ernest D. Fooks
ERNEST D. FOOKS, Attorney,
Department of Justice.

Attorneys for Defendant.

Presented by:

Ernest D. Fooks
ERNEST D. FOOKS, Attorney,
Department of Justice.

[Endorsed]: Filed Mar 16 1937 R. S. Zimmerman,
Clerk By L. B. Figg Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

ASSIGNMENTS OF ERROR

COMES NOW the defendant, the United States of America, by Peirson M. Hall, United States Attorney for the Southern District of California, and Ernest D. Fooks, Attorney, Department of Justice, and for its Assignments of Error alleges as follows:

I.

That the Court erred in denying defendant's motion for directed verdict at the conclusion of all of the evidence, on the ground that plaintiff failed to prove by substantial evidence that she became permanently and totally disabled on or prior to midnight of August 31, 1919, during the life of her contract of insurance.

II.

That the Court erred in denying defendant's motion for directed verdict at the conclusion of all of the evidence and submitting the facts to the jury for its determination, in that plaintiff failed to sustain the burden of proof by a fair preponderance of the evidence.

III.

That the Court erred in overruling defendant's objection to a question propounded to a physician, on the ground that the question called for an answer which would invade the province of the jury, and permitting the physician to testify as follows:

Question: "From your finding as to the condition of her heart would you say that it was of a permanent or temporary character?"

Answer: "Permanent."

IV.

That the Court erred in denying defendant's motion to strike the answer of the physician who testified that plain-

tiff was suffering from a condition of the heart permanent in character, in February, 1919, and in not instructing the jury to disregard the physician's answer, in that the answer invaded the province of the jury.

V.

That the Court erred in permitting a physician to testify that in November, 1920, plaintiff was suffering from a permanent heart condition, and in not striking the physician's answer and instructing the jury to disregard the same. The question propounded to the physician and his answer thereto were as follows:

Question: "You stated her heart condition was permanent?"

Answer: "Yes."

VI.

That the Court erred in entering judgment for the plaintiff and against the defendant based on the verdict of the jury that plaintiff became permanently and totally disabled from following continuously any substantially gainful occupation from January 1, 1919, in that the verdict of the jury did not conform to the allegations of the complaint and the verdict of the jury was contrary to the evidence and the law.

DATED this 16th day of March, 1937.

Peirson M. Hall

PEIRSON M. HALL,
United States Attorney.

Ernest D. Fooks

ERNEST D. FOOKS, Attorney,
Department of Justice.

Attorneys for Defendant.

[Endorsed]: Filed Mar 16 1937 R. S. Zimmerman,
Clerk By L. B. Figg Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

ORDER ALLOWING APPEAL

IT IS HEREBY ORDERED that the appeal prayed for in the Petition for Appeal in the above-entitled cause be allowed.

DATED this 16th day of March, 1937.

H. A. Hollzer
United States District Judge.

[Endorsed]: Filed Mar 16 1937 R. S. Zimmerman,
Clerk By L. B. Figg Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

PRAECIPE

TO THE CLERK OF THE ABOVE-ENTITLED
COURT:

You will please prepare a Transcript on Appeal herein including the following portions of the record, to-wit:

1. Citation filed March 16, 1937.
2. Complaint—War Risk Insurance, filed December 28, 1932.
3. Affidavit of service by mail filed March 21, 1933.
4. Answer filed June 14, 1933.
5. Minute Order made and entered on September 24, 1935, amending Answer.
6. Minute Order made and entered on December 8, 1936, dismissing the second cause of action.
7. Minute Order made and entered on December 11, 1936.
8. Verdict dated December 11, 1936.
9. Minute Order made and entered on December 15, 1936.
10. Judgment on Verdict, entered December 18, 1936.
11. Bill of Exceptions.
12. Petition for Appeal.

13. Order Allowing Appeal.
14. Assignments of Error.
15. This Praeipie.
16. Eliminate all titles of court and cause except on complaint, judgment and petition for appeal, and and eliminate all endorsements except filing dates.

BEN HARRISON

BEN HARRISON

United States Attorney

ERNEST D. FOOKS

ERNEST D. FOOKS, Attorney,
Department of Justice.

Attorneys for Defendant and Appellant.

Receipt of copy is acknowledged of the foregoing Praeipie, and it is stipulated that the contents thereof may constitute the record on Appeal.

DATED this 26th day of February, 1938.

Alvin Gerlack

ALVIN GERLACK

Attorney for Plaintiff.

[Endorsed]: Filed Feb. 28, 1938. R. S. Zimmerman,
Clerk By L. B. Figg, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 342 pages, numbered from 1 to 342 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; complaint; affidavit of service; answer; order of September 24, 1935; order of December 8, 1936; order of December 11, 1936; order of December 15, 1936; judgment; bill of exceptions; petition for appeal; assignments of error; order allowing appeal and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of April, in the year of Our Lord One Thousand Nine Hundred and Thirty-eight and of our Independence the One Hundred and Sixty-second.

R. S. ZIMMERMAN,

Clerk of the District Court of the
United States of America, in
and for the Southern District of
California.

By

Deputy.